

2006

State of Utah v. Wade Maughan : Brief of Appellee

Utah Supreme Court

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IN THE SUPREME COURT FOR THE STATE OF UTAH

STATE OF UTAH,	:	
	:	
Appellee/Cross-Appellant,	:	Case No. 20060189
v.	:	
	:	
WADE MAUGHAN,	:	
	:	
Appellant/Cross-Appellee.	:	

BRIEF OF APPELLEE AND CROSS-APPELLANT

APPEAL FROM AN INTERLOCUTORY ORDER GRANTING IN PART
AND DENYING IN PART THE STATE'S MOTION TO DISQUALIFY
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COUNTY, UTAH, THE HONORABLE BEN H. HADFIELD, PRESIDING

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BRIEF OF APPELLEE AND CROSS-APPELLANT

JURISDICTION AND NATURE OF THE PROCEEDINGS

The Court has given the State and Maughan permission to appeal the trial court's interlocutory order granting in part and denying in part the State's motion to disqualify Maughan's counsel. This Court has jurisdiction pursuant to Utah Code Ann. § 78-2-2(3)(h) (West 2004).

ISSUES AND STANDARD OF REVIEW

One day after the trial court appointed Mr. Richard Mauro and Mr. Scott Williams to represent Maughan in this capital case, Spokane police arrested Mauro for tampering with witnesses who reported to Spokane police that Mauro had told them not to speak to police. The State moved to disqualify counsel. The trial court disqualified Williams, but permitted the Mauro to remain as second-chair counsel.

1. Did the trial court abuse its discretion by disqualifying Williams?
2. Did the trial court abuse its discretion by allowing Mauro to continue representing Maughan?

The Court reviews a trial court's disposition of a motion to disqualify counsel for an abuse of discretion. *State v. Arguelles*, 2003 UT 1 ¶88, 63 P.3d 731.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

The texts of U.S. Const. Amend. 6 and Utah Code Ann. § 77-38-7(1) (West 2004) are in addendum A.

CASE STATEMENT

Approximately twenty-two years ago, Bradley Perry was murdered at the gas station where he worked. Recent DNA testing identified blood found at the crime scene as Glen Griffin's. The State charged Griffin with aggravated murder, a capital felony. (R77-89.)

In connection with investigating the *Griffin* case, Box Elder County Detectives interviewed Wade Maughan in Spokane, Washington. Maughan told detectives that he was present when Griffin murdered Perry and helped Griffin commit the crime. Based on Maughan's statement, Maughan was arrested on November 3, 2005. On November 4, 2005, the State charged Maughan with capital murder and aggravated robbery. (R1-3, 50, 91-92.)

On November 18, 2005, Mr. Richard P. Mauro entered an appearance as Maughan's counsel. On that same date, Mauro filed a formal discovery request. (R21-26.)

On November 29, 2005, the trial court issued a warrant to obtain Maughan's blood,

hair, and fingerprints. On Friday, December 2, 2005, police took Maughan to the Box Elder County Jail to execute the warrant. Maughan volunteered a statement that he was drunk when the Box Elder detectives took his statement. (R94-112.)

Also on December 2nd, Mr. Scott Williams entered his appearance as co-counsel representing Maughan (R27-28).

On December 5, 2005, Box Elder detectives asked the Spokane Police Department to interview Maughan's girlfriend, Lorraine Rima, about Maughan's report that he was drunk when he spoke to the Box Elder detectives in Spokane. Spokane Detective Mark Burbridge interviewed Rima that same day. Rima informed Detective Burbridge that Randy Wagar, a friend of hers and Maughan's, visited Maughan in jail, and that Maughan told Wagar that he had been present during the robbery and murder. (R118-20, addendum B.)

Spokane police went to Wagar's home on the morning of December 5th. Wagar was not there, and Detective Burbridge left his card with a request that Wagar contact him. (R122 (R122-25 is attached as addendum C).)

Also on December 5th, Mauro and Williams made their first court appearance on Maughan's behalf, and the trial court then formally appointed them to represent Maughan. The investigator working on the case, Mr. Theodore Cilwick, was also present at the December 5th hearing. (R50, 270, 424A.)

On that same day, Mauro and Cilwick flew to Spokane, where they interviewed Rima and Wagar. Rima's friend, Kimberly Jeffreys, was present when Mauro and Cilwick

interviewed Rima. Alta Raney, Wagar's mother, was present when Mauro and Cilwick interviewed Wagar. (R118-20, 123-24.)

Spokane police interviewed Rima again on December 6, 2005. Rima told Spokane police that, on December 5th, Mauro and Cilwick visited her and identified themselves as Maughan's attorney and as a "detective" from Utah. She told Spokane police that both Mauro and Cilwick told her not to talk to police, and that they told her that she could go to jail. Jeffreys also told Spokane police that she was present when Rima was told not to talk to police. (R118-20, 124, 127 (addendum D).)

Wagar contacted Detective Burbridge on the morning of December 6, 2005. Burbridge and another Spokane detective interviewed Wagar that same morning. Wagar first told Spokane police that Maughan's attorney visited him on the evening of December 5, 2005, and that Maughan's attorney and a detective told him not to talk to police about what Maughan had told him. In that same interview, Raney told Spokane police that she heard "the attorney and the investigator tell [Wagar] not to speak with police." (R119, 122-23.)

After Burbridge told Wagar that he was a witness and could "get himself into trouble for "Obstruction of Justice," Wagar spoke to police. Wagar reported that Maughan told him that Maughan, Griffin, and a blond male went to a convenience store, and that Griffin got into an argument with the clerk at the convenience store over \$10, so Griffin stabbed and killed the clerk. (R119.)

On the evening of December 6th, and after speaking with Rima, Jeffreys, Wagar, and

Raney, Spokane police contacted Mauro and Cilwick and asked them about their contacts with the witnesses. Mauro “immediately said that [he and Cilwick] would not speak with them.” The Spokane police then arrested Mauro and Cilwick for witness tampering. (R127.)

Sometime between Mauro’s and Cilwick’s arrests and December 8, 2005, Williams and a defense investigator visited Rima, Wagar, and Raney.

On December 8th, Spokane police again interviewed Wagar and Raney. Wagar reported that Williams and the investigator explained to him that Wagar “most likely” misunderstood what Mauro and Cilwick told him. Wagar reported that Williams told him to talk to police. Also on December 8th, Raney told Spokane police that Williams explained that there was a misunderstanding, and that it was “o.k.” for her to talk to police. (R129-31, addendum E.)

However, Wagar also stated in the December 8th interview with Spokane police that 1) he informed Mauro and Cilwick that police were trying to contact him; 2) Mauro and Cilwick told him that police probably would try to contact him; 3) it was in the course of that conversation that Mauro and Cilwick instructed him not to talk to anyone; 4) the instruction not to talk to anyone came after Wagar told Mauro and Cilwick that police were trying to talk to Wagar; 5) he recalled telling Detective Burbridge that he had been instructed not to talk to police; 6) he was not lying to Burbridge at that time; and 7) believed that he had been instructed not to talk to police. Wagar also told Spokane police that he did not want to get Maughan’s attorneys into trouble. (R130.)

Likewise, Raney, in the December 8th interview, told Spokane police that 1) she heard Wagar tell Mauro and Cilwick that police were trying to contact them; 2) Mauro and Cilwick told Wagar and Raney that the police likely would try to contact them; 3) Mauro and Cilwick told them not to talk to anyone about the case; 4) Mauro and Cilwick gave them that instruction in the initial conversation where they had talked about police trying to contact her; and 5) Mauro and Cilwick did not tell her to talk to police (R129).

On December 14, 2005, Rima, in the presence of her attorney, gave a videotaped statement. Rima acknowledged that she was “kind of in a fog here” because she had not taken her medication (R386). During the video statement, she seemed somewhat confused; however, she did state that Mauro and Cilwick told her not to talk to police (R392). (R382-97 is attached as addendum F.)

On December 15, 2005, after Mauro’s and Cilwick’s arrests for witness tampering, Williams responded to the State’s request to discuss converting the voluminous discovery into electronic media. Williams stated, “[T]he firestorm related to the events in Spokane have wholly occupied our time.” The letter continues, “[W]e would appreciate all discovery that should be provided pursuant to rule 16 at the earliest possibility, especially that which may pertain to the events and circumstances of the Spokane incident.” (R150-51 (addendum G).)

Mauro, Williams, and Cilwick, retained Mr. Ken Brown and Mr. Mark Moffat to represent them. On December 27, 2005, Moffat wrote to the prosecutor that the Spokane

witness tampering investigation had “substantially interfered with Mr. Mauro’s and Mr. Williams’ efforts to represent Mr. Maughan” (R134-35, addendum H).

On January 4, 2006, the State moved to disqualify Mauro and Williams. The State based the motion on the events surrounding the Spokane witness tampering allegations. The State also initially based the motion on a report from Ms. Cheryl Elzinga that Maughan’s counsel had attempted to elicit information from her by posing as news reporters. The State attached a copy of the police statement taken from Elzinga. (R49-75, 114.)

On January 31, 2006, Brown took sworn statements from Wagar and Raney (R329-80). Using leading questions, Brown asked Wagar multiple times whether Mauro and Cilwick ever told him not to talk to the police; Wagar denied each time that Mauro and Cilwick told him not to talk to police (R334-35, 337-39, 343). However, Wagar also told Brown that Mauro and Cilwick told him not to talk to anyone, and that they told him that the police would probably be contacting him (R338, 343).

Similarly, Brown, again using leading questions, repeatedly asked Raney whether Mauro and Cilwick told her not to talk to police. She stated that they did not, that they told her not to talk to anybody, but that she understood “anybody” to include police (R361-63, 366-68).

Mauro and Cilwick both filed affidavits with their objection to the motion to disqualify (R255-62 (addendum I), 269-73 (addendum J)). Cilwick states that he never told any of the witnesses not to talk to or cooperate with police, and that he never heard Mauro

tell the witnesses not to talk to or cooperate with police (R272). Mauro's affidavit says nothing about what he did or did not tell the Spokane witnesses (R255-62).

However, neither affidavit refutes Wagar's and Raney's post-December 5th statements that Mauro and Cilwick told Wagar and Raney not to talk to anyone. Neither affidavit refutes their December 8th statements to Spokane police and Wagar's January 31st statement to Brown that the direction not to talk to anyone came in the same interview where they told Wagar that police would be trying to contact him.

Williams also filed an affidavit. His affidavit says nothing about what he did or did not say to the Spokane witnesses. (R264-67).

Before the State filed its reply memorandum and argued the motion to disqualify, the State's investigation revealed that Elzinga's allegations lacked credibility. Therefore, both in its reply memorandum and at oral argument that State withdrew its motion to the extent it relied on Elzinga's allegations. (R545-47, 650A:14.)

On February 10, 2006, the Utah prosecutor interviewed Wagar. This time, Wagar stated that Mr. Perry grabbed and used a screwdriver in the fight with Griffin. (R544; Tr. February 10, 2006 (addendum K), at 13).

Also, for the first time in the February 10th interview, Wagar denied that Mauro and Cilwick told him that the police would be trying to contact him. However, he stated that they told him not to talk to anybody in the same part of the conversation where they told him to expect other attorneys to contact him. He further stated that the police got angry because he

would not talk to them, and stated that this was so because he understood the direction “not to discuss this with anyone” to include police. (Tr. February 10, 2006, at 6.)

On February 15, 2006, the trial court heard argument on the motion to disqualify Mauro and Williams (R650A, addendum L).

The trial court issued a memorandum decision immediately after argument. The trial court found that 1) counsel’s arrest on witness tampering charges appeared to be an unprecedented event; 2) counsel’s arrest and potential prosecution created “a firestorm of controversy totally independent of the pending capital homicide charges;” 3) there existed a continuing possibility of criminal prosecution in Washington or of proceedings under Utah R. Prof. Conduct 3.4; 4) the case was in its earliest stages, noting that Maughan’s preliminary hearing was not yet scheduled; and 5) examining Wagar at trial might raise issues that would implicate Mauro or Williams to Maughan’s detriment, creating a potential conflict. Although the court made no finding that Mauro and Williams had committed any wrongdoing, it did find ““at least a reasonable possibility that either a serious violation of the law or ethical standards occurred”” and “a reasonable possibility that witness tampering occurred.” (R634-35 (citation omitted), addendum M.)

The trial court continued that it had to balance Maughan’s purported “right to be represented by an attorney of his choice against the need to maintain the highest standards of professional responsibility” (R634). The court ordered the appointment of new lead counsel, but allowed Maughan to choose which of his present counsel to retain as co-counsel,

“[i]n an attempt to balance [Maughan’s] Sixth Amendment rights” (R635).

After recessing to allow Maughan time to confer with counsel about his choice, the trial court reconvened and asked Maughan whether he wished to keep either appointed attorney. Maughan, through Mauro, responded that he wished to keep both and expressed his willingness to waive any potential or actual conflict as to both attorneys. (R650A at 43-44.)

The trial court declined Maughan’s request and required him to choose. Maughan chose to retain Mauro as co-counsel. (*Id.* at 44.)

The trial court then inquired whether Maughan had had an opportunity to discuss “with counsel the potential conflicts of interest that could occur.” Maughan agreed that he had. The trial court continued that it wanted “to make sure” Maughan was aware that a conflict of interest is “a potential issue.” The court continued that “[i]f, for instance, at trial something arose where Mr. Mauro would possibly become a witness, he wouldn’t be allowed to testify because he’s your attorney.” Maughan agreed that he understood that possibility. The court discussed with Maughan no other existing or potential conflict, including those identified in its order. (*Id.* at 45-46.) The trial court did not appoint independent counsel to advise Maughan about the disqualification issues or on his choices with respect to current defense counsel.

Following the order, both parties moved to stay the trial proceedings (R648-49, 676-80). Both parties timely requested leave for permission to appeal: the State from the part of

criminal proceedings, the judiciary's interest in efficient case management, and a defendant's Sixth Amendment right to the effective assistance of counsel all may limit a trial court's discretion to remove appointed counsel.

However, under either approach – entertaining a presumption in favor of counsel of choice or substituting for that presumption other considerations – the trial court did not abuse its discretion when it concluded that the potential conflicts outweighed any interest in allowing Williams to continue as Maughan's attorney. In addition, Williams admitted that he had prioritized co-counsel's and the investigator's interests in defending against Spokane witness tampering allegations over preparing Maughan's defense and mitigation case. Maughan's proffered waiver did not require the trial court to ignore either the potential or actual conflicts.

2. The trial court abused its discretion by allowing Mauro to remain on Maughan's case.

The trial court's order disqualifying Williams cannot be reconciled with its order allowing Mauro to continue representing Maughan. The trial court should have exercised its discretion to remove both.

The reasons for removing Mauro were even more compelling than the reasons for removing Williams. Mauro, like Williams, admitted an actual conflict: he admitted that he had prioritized defending against the Spokane witness tampering allegations over preparing Maughan's case.

Moreover, the trial court found "at least a reasonable possibility" that witness

tampering occurred. That finding established the risk of a potential conflict of interest as well as the risk of undermining public confidence in this capital murder prosecution.

On the other side of the balance, no substantial reason weighed in favor of allowing Mauro to continue representing Maughan regardless of the standard applied.

ARGUMENT

POINT I

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY DISQUALIFYING WILLIAMS BECAUSE NONE OF MAUGHAN'S RIGHTS OUTWEIGHED THE POTENTIAL AND ADMITTED CONFLICTS OR THE NEED TO ENSURE PUBLIC CONFIDENCE IN THE PROCEEDINGS

The trial court granted the State's motion to disqualify Williams. This Court reviews that decision for an abuse of discretion. *State v. Arguelles*, 2003 UT 1 ¶88, 63 P.3d 731.

The trial court applied the balancing test that this Court established in *Arguelles*, which required the court "to recognize a presumption in favor of [Maughan's] counsel of choice." *Id.* As detailed below, Maughan, as an indigent defendant, enjoys no such right. To the extent that *Arguelles* recognizes a limited Sixth Amendment right to representation by appointed counsel of choice, it contradicts clearly controlling federal precedent; therefore, the Court should overturn it.

However, the State is not asking the Court to eliminate the *Arguelles* balancing procedure or to give trial courts unfettered discretion to remove appointed counsel. Other legitimate interests of a defendant, the victims, and the judiciary may limit a trial court's

discretion. Indeed, giving due weight to the appropriate considerations will protect many of the interests that Maughan and UACDL argue should be protected. The State asks the Court to substitute in the balancing process those legitimate considerations for the legally insupportable presumption in favor of an indigent defendant's right to choose his appointed counsel.

Under either analysis, the trial court did not abuse its discretion by disqualifying Williams.

A. An indigent defendant has no right to choose his counsel.

The trial court founded its decision and Maughan founds his appellate arguments on the purported "presumption in favor of counsel of choice." R634-35; Appellant's Brief at 31. Both rely on the balancing test that this Court established in *State v. Arguelles*, 2003 UT 1, which requires weighing an actual conflict or a serious potential conflict of interest against the "presumption in favor of [] counsel of choice." *State v. Arguelles*, 2003 UT 1 ¶¶87-88. Like Maughan, Arguelles was indigent, and, like Maughan's counsel, Arguelles's counsel were appointed. Therefore, *Arguelles* creates for an indigent defendant a "presumption in favor of [appointed] counsel of choice." *Id.* at ¶88.

The *Arguelles* presumption misapplies and contradicts federal precedent, including controlling United States Supreme Court precedent.² To support its conclusion that an

²The State recognizes that it did not make this argument in the trial court; nevertheless, the issue is properly before the Court. The trial court granted the State's motion to disqualify Williams. The Court may rely on any "legal ground or theory apparent on the record" to affirm that outcome. *See, e.g., Bailey v. Bayles*, 2002 UT 58

indigent defendant enjoys a limited Sixth Amendment right to appointed counsel of choice, this Court relied solely on *United States v. Okun*, slip op. 00-1716, 12 Fed. Appx. 83 (2nd Cir. June 20, 2001), and *Wheat v. United States*, 486 U.S. 153 (1988). *State v. Arguelles*, 2003 UT 1 ¶87. However, both cases stand only for the proposition that a non-indigent criminal defendant has a limited right to retain, at his own expense, his chosen counsel. *United States v. Okun*, slip op. 00-1716 at 1 (Okun retained the attorney who was disqualified over his objection); *United States v. Wheat*, 813 F.2d 1399, 1401 (9th Cir. 1987) (“The sixth amendment provides that criminal defendants *who can afford retained counsel* have a qualified right to counsel of their choice” (emphasis added)), *affirmed*, *Wheat v. United States*, 486 U.S. 153 (1988). Neither *Okun* nor *Wheat* support this Court’s conclusion that indigent defendants such as Arguelles and Maughan have a Sixth Amendment right to representation by appointed counsel of choice.

The United States Supreme Court has made clear that the limited Sixth Amendment right to representation by chosen counsel applies only to non-indigent defendants. In *United States v. Gonzales-Lopez*, 126 S. Ct. 2557 (2006), the Supreme Court, citing *Wheat*, stated, “We have previously held that an element of [the Sixth Amendment right to counsel] is the right of a defendant *who does not require appointed counsel* to choose who will represent him.” *Id.* at 2561 (citing *Wheat v. United States*, 486 U.S. 153, 159 (1988) (emphasis added)).

¶10, 52 P.3d 1158 (citation omitted). *See also State v. South*, 924 P.2d 354, 357 (Utah 1996) (the Court may affirm the outcome on a theory that the lower court considered and rejected).

The Supreme Court also recognized this distinction in *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617 (1989). The defendant in *Caplin* selected and retained Caplin & Drysdale to represent him in a criminal prosecution. The government sought forfeiture of the assets that the defendant intended to use to pay his chosen counsel, and after the defendant was indicted, those funds were frozen. Nevertheless, the defendant used those funds to pay Caplin & Drysdale a \$25,000 fee. *Id.* at 620-21. Caplin & Drysdale filed a claim to have their fees paid from the funds, arguing, in part, that the forfeiture infringed on their client’s Sixth Amendment right to choose his counsel. *Id.* at 623-24.

In rejecting Caplin & Drysdale’s claim, the Supreme Court reasoned that Caplin & Drysdale had “not, nor could it defensibly [have done] so, assert[ed] that impecunious defendants have a Sixth Amendment right to choose their counsel. The Amendment guarantees defendants in criminal cases the right to adequate representation, but those who do not have the means to hire their own lawyers have no cognizable complaint so long as they are adequately represented by attorneys appointed by the courts.” *Id.* at 624. In support of that reasoning, the Supreme Court quoted *Wheat* for the proposition that “[a] defendant may not insist on representation by an attorney he cannot afford.” *Id.* (quoting *Wheat v. United States*, 486 U.S. at 159).³

³Numerous other courts also recognize that only defendants who can afford private counsel enjoy the limited right to choose their counsel. *See, e.g., United States v. Orege*, 263 F.3d 669, 671 (7th Cir. 2001) (district court properly denied request for second substitute counsel, “given the fact that an indigent defendant has a right to competent counsel but not a right to counsel of his choice”), *cert. denied*, 535 U.S. 933 (2002); *Miller v. Smith*, 115 F.3d 1136, 1143 (4th Cir.) (right to chose counsel does not extend

Gonzales-Lopes, Caplin & Drysdale, and *Wheat*, including the lower-court decision in *Wheat*, demonstrate that this Court misapplied *Wheat* to require weighing the need to remove appointed counsel against a presumption in favor of an indigent’s purported right to representation by counsel of choice. The right to be presumed under *Wheat* does not exist in the context of appointed counsel for indigent defendants such as Maughan.⁴

B. Maughan has no Sixth Amendment right to continued representation by his appointed counsel.

UACDL argues that, even if Maughan had no right to select the counsel appointed to represent him, he does have a Sixth Amendment right to continued representation by appointed counsel of choice co-equal to a non-indigent defendant’s Sixth Amendment right

beyond person’s ability to pay for counsel), *cert. denied*, 522 U.S. 884 (1997); *United States v. Graham*, 91 F.3d 213, 217 (D.C. Cir. 1996) (“an indigent defendant who seeks court-appointed representation has no constitutional right to the counsel of his choice; he has only the right to effective representation”), *cert. denied*, 519 U.S. 1136 (1997); *United States v. Mendoza-Salgado*, 964 F.2d 993, 1015 n.12 (10th Cir. 1992) (recognizing that an indigent defendant does not have the right to chose counsel) (*dicta*); *United States v. Iles*, 906 F.2d 1122, 1130 (6th Cir. 1990) (indigent defendant must demonstrate good cause for substituting appointed counsel because he has no Sixth Amendment right to counsel of choice).

⁴The State acknowledges that it bears a “substantial burden of persuasion” to justify overturning this Court’s precedent. *See State v. Menzies*, 889 P.2d 393, 398 (Utah 1994). The “doctrine of stare decisis” “mandate[s]” that burden. *Id.*

However, as a court of last resort, this Court is not “inexorably bound by its own precedents.” *Id.* at 399 (citation omitted). This Court will follow its precedents “unless clearly convinced that *the rule was originally erroneous* or is no longer sound because of changing conditions and that more good than harm will come by departing from precedent.” *Id.* (emphasis added, citation omitted). The State has satisfied its “substantial burden” because, as established, *Arguelles* misapplied and contradicts controlling United States Supreme Court authority. Therefore, the rule that this Court set in *Arguelles* “was originally erroneous.”

to choose his counsel. Amicus Brief at 6-9.

The Court should ignore the argument. Amicus curiae may not expand the appellate issues beyond those that the parties present. *See, e.g., Madsen v. Borthick*, 658 P.2d 627, 629 n.3 (Utah 1983); *Dean v. Henriod*, 1999 UT App. 50 ¶¶5-7, 975 P.2d 946. Maughan, relying on *Arguelles* and *Wheat*, has argued only that he has the same right to representation by counsel of choice that a non-indigent defendant enjoys. Appellant's Brief at 31. He has not argued that, although he had no right to choose who would be appointed to represent him, he does have a right to continued representation by the attorney chosen for him. The Court should not address this argument.

Alternatively, UACDL's argument fails on the merits. UACDL relies on appellate court decisions from other States holding that, once counsel is appointed, the indigent defendant enjoys the same right to continued representation by his preferred appointed counsel that a non-indigent defendant enjoys to continued representation by his retained counsel. *See generally* Amicus Brief at 6-7, citing and quoting *Smith v. Superior Court of Los Angeles County*, 440 P.2d 65 (Cal. 1968), and citing *Commonwealth v. Jordan*, 733 N.E.2d 147, 152 (Mass. App. Ct. 2000); *People v. Johnson*, 547 N.W.2d 65, 69 (Mich. Ct. App. 1996); and *State v. Husky*, 82 S.W.3d 297, 305 (Tenn. Crim. App. 2002).

However, the United States Supreme Court has rejected the reasoning on which UACDL and the cases it cites rely. UACDL argues that an indigent defendant must have a Sixth Amendment right to continued representation by preferred appointed counsel because

the attorney-client relationship involves “an intimate process of consultation and planning which culminates in a state of trust and confidence between the client and his [] attorney,” which is “particularly essential, of course, when the attorney is defending the client’s life or liberty.” Amicus Brief at 6 (quoting *Smith v. Superior Court*, 440 P.2d at 74). In *Slappy v. Morris*, 649 F.2d 718, 721 (9th Cir. 1981), the Ninth Circuit followed this same reasoning and quoted the same language from *Smith* to support its conclusion that the Sixth Amendment right to counsel must encompass a right to a “meaningful attorney-client relationship.” *Id.* at 720-21. Applying that analysis, the Ninth Circuit held that the state trial court violated Slappy’s right to continued representation by preferred appointed counsel when it denied Slappy’s motion to continue his trial to allow time for his preferred appointed counsel to recover from an illness and forced Slappy to proceed to trial with a substitute public defender. *Id.* at 722.

The United States Supreme Court reversed the Ninth Circuit. *Morris v. Slappy*, 461 U.S. 1 (1983). As to the reasoning at issue here, the Supreme Court held that the Ninth Circuit’s “conclusion that the Sixth Amendment right to counsel ‘would be without substance if it did not include the right to a *meaningful attorney-client relationship*,’ . . . is without basis in the law. No authority was cited for this novel ingredient of the Sixth Amendment guarantee of counsel, and of course none could be.” *Id.* at 13 (emphasis in Supreme Court opinion). The Supreme Court’s holding that the Sixth Amendment right to counsel includes no guarantee to a “meaningful attorney-client relationship” refutes UACDL’s argument that

the Sixth Amendment must create for indigent defendants a limited right to continued representation by a specific appointed counsel because such a right is necessary to foster a relationship of trust and confidence. *See United States v. Parker*, 469 F.3d 57, 61 (2nd Cir. 2006) (citing *Slappy* for the proposition that “[t]here is no constitutional right to continuity of appointed counsel”).⁵

Caplin & Drysdale also undercuts UACDL’s reasoning. The defendant in that case,

⁵Even if the Supreme Court had not rejected the *Smith* reasoning that UACDL asks this Court to adopt, *Smith* does not support UACDL’s argument that the Sixth Amendment guarantees the right to continued representation by a specific appointed counsel. Amicus Brief at 6-7. As the California Supreme Court later recognized, it was “far from clear” whether *Smith* was grounded on the federal constitution, on the California Constitution, or merely on a court-imposed rule delineating trial court discretion. *People v. Jones*, 91 P.3d 939, 945 (Cal. 2004).

Smith’s reasoning also does not support its conclusion that an indigent defendant enjoys the same right to continued representation by appointed counsel of choice as a non-indigent defendant enjoys to continued representation by retained counsel. First, *Smith*, as stated, founded its conclusion on the need to foster a relationship of trust and confidence between a defendant and his counsel. *Smith v. Superior Court*, 440 P.2d at 561. Even if the Supreme Court had not rejected that reasoning, it rests on the unsupported assumption that a defendant can develop a relationship of trust and confidence with only one attorney, and one that was appointed at random to begin with.

Second, *Smith* also founded its holding on the assumption that failing to give an indigent defendant the same right to continued representation by appointed counsel of choice that a non-indigent enjoys to continued representation by retained counsel of choice would result in an “invidious discrimination arising merely from the poverty of the accused.” *Id.* at 562. However, the right to choose counsel in the first place rests on the same discrimination between indigent and non-indigent defendants. UACDL fails to explain why the Sixth Amendment permits one economic discrimination, but not the other. Moreover, as explained in the text, the right to continued representation by retained counsel of choice ends once a defendant becomes impecunious. UACDL cites nothing for the proposition that a defendant who was indigent when the criminal proceedings began has greater rights than a defendant who became indigent during the course of those proceedings.

who was not indigent at the outset, retained Caplin & Drysdale to represent him in the criminal proceedings. However, the order freezing the defendant's assets rendered him indigent after he had retained his chosen counsel. The Supreme Court rejected the argument that this situation violated the defendant's Sixth Amendment right to choose his counsel. *Caplin & Drysdale, Chartered v. United States*, 491 U.S. at 621-24. In other words, the defendant's right to continued representation by the attorneys that he had retained ended when he became indigent during the course of the criminal proceedings. *See also United States v. Messino*, 181 F.3d 826, 831 (7th Cir. 1999) (Messino's right to counsel of choice ended when he ran out of funds to pay his retained counsel). UACDL offers no analysis to support its necessary argument that a person who never had the right to choose his counsel enjoys a right to continued representation by an appointed attorney, but a person who originally had the right to choose his counsel loses his right to continued representation by his chosen attorney when he becomes indigent.

C. Although a defendant has no right to representation by his preferred appointed counsel, other legitimate interests may limit a trial court's discretion to replace an indigent defendant's appointed counsel.

The State does not ask the Court to eliminate the balancing procedure established in *Arguelles*. An indigent defendant's other constitutional and statutory rights, the victim's rights, and other institutional interests may limit a trial court's discretion to remove appointed counsel. The State asks only that the Court substitute in the weighing process those legitimate concerns for the legally insupportable presumption in favor an indigent defendant's limited

right to choose his public defender. Indeed, most of the reasons that Maughan and UACDL advance about why the Court should limit on a trial court's discretion to remove appointed counsel are implicated by and may be addressed through other, legitimate considerations.

Although there is no Sixth Amendment right to a "meaningful attorney-client relationship," interrupting an indigent defendant's long-standing attorney-client relationship with appointed counsel may threaten other rights and interests. All defendants have a Sixth Amendment right to a speedy trial. U.S. Const. Amend VI. The Victims' Rights Act requires that a trial court setting a trial date "*shall* consider the interests of the victim of a crime to a speedy resolution of the charges" Utah Code Ann. § 77-38-7(1) (West 2004) (emphasis added). In addition, the courts have an institutional interest in seeing that a case proceeds efficiently and expeditiously.

The delay that may follow from interrupting an attorney-client relationship while replacement counsel comes up to speed may threaten these rights and interests. The case's complexity, counsel's preparation and familiarity with the case, the time left before the scheduled trial, and the potential loss of evidence should all factor into considering how much weight to give to the need for expedition. A complex case with a looming trial date and with which appointed counsel has extensive familiarity should weigh more heavily against replacing counsel. On the other hand, when the replacement issue arises in a nascent case and will not result in the loss of evidence, expedition should carry less weight in the balancing process. *Cf., e.g., Amadeo v. State*, 384 S.E.2d 181, 183 (Ga. 1989) (trial court erred by not

appointing counsel for Amadeo's retrial the attorneys who had represented Amadeo for ten and four years on the same and were thoroughly familiar with his case); *Harris v. Superior Court of Alameda County*, 567 P.2d 750, 754, 757-58 (Cal. 1977) (*en banc*) (trial court erred by not appointing attorneys who previously had represented defendants in criminal proceedings with similar issues, in part because of their experience with those issues and because the prosecutor had been preparing the case for three years).

In addition, the Sixth Amendment clearly guarantees to all criminal defendants the right to the effective assistance of counsel. The State agrees that a rule allowing a court to remove counsel for competent or even aggressive representation conducted in compliance with the controlling rules threatens that right. Clearly, removing counsel for promptly interviewing witnesses will discourage effective and efficient representation. Appellant's Brief at 37-38; Amicus Brief at 15-18.⁶

⁶In support of its argument that Maughan's counsel merely complied with the American Bar Association Guidelines when they met with the Spokane witnesses, UACDL states that the United States Supreme Court has endorsed the ABA Guidelines in counsel's investigative duties. Amicus Brief at 14. UACDL then relies heavily on what the ABA Guidelines prescribe for capital case preparation. *Id.* at 14-17. If UACDL intends to argue that the Sixth Amendment requires counsel in every death-penalty case to perform all that the ABA Guidelines suggest, it misstates the law. In *Wiggins v. Smith*, 539 U.S. 510 (2003), the Supreme Court recognized that the ABA Guidelines are "guides" in assessing the reasonableness of trial counsel's performance. *Id.* at 522. Further, the Supreme Court cited to *Strickland v. Washington*, in which it declined to adopt the ABA Guidelines as rules for representation. *Id.* (citing *Strickland v. Washington*, 466 U.S. 668, 688-89 (1984) (the ABA Guidelines are "only guides" to what constitutes objectively reasonable representation under the Sixth Amendment; "[n]o particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Any such set of rules would

Similarly, a court should not remove counsel merely because the court finds his litigation style distasteful or even uncivil. Defense counsel should have the freedom to represent their clients without having to worry about being removed from a case by offending an overly sensitive judge. *Cf., e.g., State v. Husky*, 82 S.W.3d at 309 (trial court erroneously disqualified counsel who had represented Husky on the murder charges alone for ten years and through three trials; basis for disqualification – perceived abusive motion practice – required more measured responses); *Harling v. United States*, 387 A.2d 1101, 1104-1105 (D.C. 1978) (trial court unjustifiably removed appointed counsel who had extensively

interfere with the constitutionally protected independence of counsel and restrict the wide latitude counsel must have in making tactical decisions”)).

UACDL also argues that counsel’s failure to investigate his client’s past “fully” constitutes ineffective assistance, citing to *Wiggins* and *Rompilla v. Beard*, 545 U.S. 374 (2005). Amicus Brief at 14. To the extent UACDL suggests that the Sixth Amendment requires an exhaustive mitigation investigation irrespective of a client’s wishes or the information that the client provided to his counsel, it again misstates the law. In *Wiggins*, the Supreme Court stressed that the Sixth Amendment “does not require counsel to investigate every conceivable line of mitigating evidence no matter how unlikely the effort would be to assist the defendant at sentencing.” *Wiggins v. Smith*, 539 U.S. at 533. In addition, *Wiggins* relied on *Strickland v. Washington*, where the Supreme Court stated that the reasonableness of counsel’s investigation “depends critically” upon information that his client provides and found that Washington’s counsel’s far less than exhaustive investigation complied with Sixth Amendment requirements. *Strickland v. Washington*, 466 U.S. at 672-73, 690-91, 698-701.

Rompilla did not change that standard. *Rompilla*’s counsel relied on *Rompilla*’s and his family’s representations that there was no mitigation evidence beyond what they told him. *Rompilla v. Beard*, 545 U.S. at 381-82. The Supreme Court did not hold, as UACDL represents, that counsel in every death-penalty case must look for additional mitigation evidence despite his client’s assurances that no more exists. The Supreme Court held only that Sixth Amendment obligates defense counsel to review the prosecution’s aggravation evidence. *Rompilla*’s counsel failed to do so. If they had, they would have found clues that there was more mitigation evidence available despite *Rompilla*’s and his family’s assurances to the contrary. *Id.* at 377-87, 389-93.

prepared Harling's case, litigation practices that court found objectionable were within the bounds of legitimate advocacy).⁷

The State also agrees that unfettered discretion in replacing appointed counsel poses systemic threats. Amicus Brief at 17-18, 24-26. An unfounded replacement of counsel in one case will chill counsel's representation in others. For example, replacing counsel in a case for making novel legal arguments in compliance with the controlling rules may chill counsel in other cases from fully pressing their client's case.⁸

The State also agrees that the Court should not countenance the State using a motion to disqualify as a tool to remove an attorney that the prosecutor dislikes or fears as a "formidable" opponent. In particular, when the State uses such a motion merely to "elbow" out an particular opposing counsel, it threatens the defendant's Sixth Amendment right to effective representation. *See State v. Serna*, 787 P.2d 1056, 1063-65 (Ariz. 1990).

In sum, the State is not advocating that the Court abolish the balancing procedure adopted in *Arguelles* and *Wheat*. The State argues only that the Court should substitute the appropriate considerations identified above for the legally insupportable presumption in favor

⁷Granted, *Husky*, *Amadeo* and *Harris*, depend in part on the purported right to choose or continue to be presented by appointed counsel. As established, neither right exists. However, they do recognize the institutional costs that flow from replacing counsel with experience and expertise in complicated cases and for reasons .

⁸This is not to say, of course, that effective representation means that appointed defense counsel have *carte blanche* in representing their clients. As they have with retained counsel, courts should have the authority to replace appointed counsel who recalcitrantly or blatantly violate court rules, press arguments that the court has rejected, or otherwise unjustifiably disrupt a case's progress.

of an indigent defendant's right to representation by a preferred public defender. However, as explained in points ID and II, none of the rights and interests discussed above are or would be threatened by removing both Williams and Mauro.

D. Applying a balancing test that relies on appropriate considerations establishes that the trial court did not abuse its discretion when it disqualified Williams.

Nothing weighs in favor of reversing the trial court's order removing Williams. First, replacing counsel will not threaten Maughan's speedy trial right. The murder occurred over two decades ago, and, at this point, the case against Maughan turns primarily on his confession. As detailed, the witness tampering issue arose the same day that Williams was appointed, and by his own representation, Williams's preparation for Maughan's case stopped at that point (R135, 150-51). There has not been a preliminary hearing (R634). Replacing Williams will cause little or no delay to bring new counsel up to speed, or, it appears, threaten the loss of evidence critical to Maughan's defense.

This is not a case, as both Maughan and UACDL assert, where the State has "orchestrate[d]" or "manufacture[d]" a basis for disqualifying Williams. Appellant's Brief at 41-45; Amicus Brief at 19-20 (citation omitted). The State did not "orchestrate" or "manufacture" the witness tampering allegations that caused Williams to cease working on Maughan's case. The State did not tell Raney, Wagar, Rima, and Jeffreys to report to police that the Maughan's defense team told witnesses not to speak to police.

To the contrary, the events leading to the witness tampering allegations and to the motion to disqualify all arose out of events over which the State had no control. Spokane

police acted on a report that Maughan's attorney and investigator told them not to talk to police. When Spokane police asked Mauro and Cilwick about the alleged witness tampering, they refused to talk about it. At that point, Spokane police arrested them on witness tampering charges. Williams later represented that the witness tampering charges had "wholly occupied [the defense team's] time." (R118-20, 122-24, 127, 150-51.) Thus, when the State moved to disqualify Williams, he had stopped working on Maughan's case as a consequence of events over which the State had no control. The State neither "orchestrat[ed]" nor "manufacture[d]" anything on which it relied to support its motion to disqualify.⁹

This case also does not present the problem, as UACDL argues, of the State moving to disqualify counsel to remove Maughan's "formidable defense team" in favor of less aggressive or competent opponents. Amicus Brief at 21-22. The record does not support the motive UACDL attributes to the State.¹⁰ The State has no idea who will replace Williams and had no idea who would replace him when it filed the motion to disqualify. The high qualification standards set by Utah R. Crim. P. 8 protect against the State generally using disqualification motions to secure less competent opponents in capital cases. In this case, rule

⁹Maughan's argument violates standard 3 of the Utah Standards of Professionalism and Civility, which 1) provides that "[l]awyers shall not, without an adequate factual basis, attribute to other counsel . . . improper motives, purpose, or conduct;" and 2) prohibits "disparag[ing] the integrity, . . . ethics, or personal behavior of an adversary unless such matters are directly relevant under controlling law." As detailed in the argument, there is no factual support for the argument that the State "orchestrate[d]" a conflict.

¹⁰This argument also violates standard 3 of the Utah Standards of Professionalism and Civility.

8 should secure replacement counsel with skill comparable to the attorneys whom they will replace, and who may be even more “formidable” than Williams and Mauro.

On the other side of the scale, an actual or serious potential conflict of interest will weigh in favor. *State v. Arguelles*, 2003 UT 1 ¶¶87-88. In addition, a trial court must consider whether the continued representation “‘create[s] a serious risk of undermining public confidence in the integrity of our legal system.’” *State v. Johnson*, 823 P.2d 484, 490 (Utah App. 1991) (citation omitted). A trial court “has “‘an independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them.’” *Arguelles*, 2008 UT 1 ¶89. Here, the circumstances, including circumstances that Williams admitted, weigh heavily in favor of the trial court’s decision to disqualify Williams.

Williams admitted to an actual Sixth Amendment conflict of interest. A Sixth Amendment conflict of interests exists where counsel make choices that advance interests other than their client’s to the detriment of their client. *See, e.g., State v. Taylor*, 947 P.2d 681, 686 (Utah 1997), *cert. denied*, 525 U.S. 833 (1998). Here, Williams admitted that he put his co-counsel’s and investigator’s interests in defending against the witness tampering allegations ahead of Maughan’s interest in preparing his case. When the prosecutor wrote to Williams to discuss a cooperative discovery effort, Williams responded that defending his co-counsel and investigator against the Spokane witness tampering allegations had “wholly” occupied his time. In addition, his discussion of the discovery focused on discovery related

to the witness tampering allegations, not discovery related to the prosecution against his client. (R150-51.)

In addition to the admitted actual conflict of interest, the trial court correctly found that Williams had a potential conflict because examining Wagar at trial may raise issues that would implicate Williams to Maughan's detriment (R634). Wagar has given different accounts of Maughan's admissions to him about Brad Perry's murder. Wagar initially reported to Spokane police that Maughan admitted being present when Griffin stabbed Brad Perry after Griffin got into an argument with Perry over \$10 (R119). Williams then traveled to Spokane and met with Wagar (R129-31). In a videotaped statement taken some time after Williams met with Wagar, Wagar stated that Maughan reported that Brad Perry grabbed and used a screwdriver in the fight with Griffin (Tr. February 10, 2006, at 13). The first account describes an aggravated murder; the second incorporates a possible imperfect self-defense theory or a lack of intent theory.

At trial, Williams clearly must elicit the second, more exculpatory account. However, if he does so, it will open the door to a cross-examination admission that Wagar changed his testimony only after Williams met with him, leaving the inference that Williams prompted the change. On the other hand, it would work to Williams's benefit if Wagar disavowed the more exculpatory version and embraced the more inculpatory version that preceded the Williams-Wagar interview. That scenario would remove the inference that Williams may have said something to prompt Wagar to give the more exculpatory version, but would implicate

Williams's client in an aggravated murder. Similarly, the admission that Wagar gave a more exculpatory version of Maughan's account of the murder after Williams interviewed Wagar would hardly lend credibility to Maughan's defense if Williams continues to represent him in front of the jury. *Cf. State v. Johnson*, 823 P.2d at 490 (accusations that Johnson's counsel was implicated in Johnson's criminal activity eroded his credibility as defense counsel).

Maughan has not established that no actual or potential conflict existed. Maughan asserts only that the conflict was based on Williams's interviews concerning the witness tampering allegations. He continues that the witnesses have all asserted that they misunderstood what Mauro and Cilwick told them, and that the change did not result from "anything told to them by other members of the defense team." Appellant's Brief at 39-40.¹¹ Maughan wholly ignores the actual conflict to which Williams admitted and the potential conflicts that on which the trial court relied.

In sum, nothing weighs in favor of allowing Williams to remain on the case. On the other side of the scales, Williams already has admitted to a Sixth Amendment conflict of interest, and the trial court correctly found other potential conflicts related to examining Wagar at trial. Based on this balancing, the Court should affirm the trial court's decision to replace Williams.

¹¹Maughan overstates the record. Wagar and Raney told police that they had determined that they misunderstood what Mauro and Cilwick told them about talking to police after Williams had "explained" that they misunderstood it.

E. Alternatively, under *Arguelles*, the trial court did not abuse its discretion in deciding to remove Williams.

Even applying the *Arguelles* presumption in favor of representation by counsel of choice, the trial court did not abuse its discretion by removing Williams. Under *Arguelles*, an actual or serious potential for a conflict of interest will overcome the presumption in favor of representation by appointed counsel of choice. *State v. Arguelles*, 2003 UT 1 ¶¶87-88. As demonstrated, Williams has admitted to an actual Sixth Amendment conflict of interest: he placed his co-counsel's interests in defending against the witness tampering allegations over his preparation of Maughan's case. Also as demonstrated, the trial court correctly found that a serious potential for a conflict exists because examining Wagar may raise issues that may "implicate . . . Williams to [Maughan's] detriment" (R634).

Little weighs on the other side of the balance. Maughan at best had only a weak interest in having Williams continue as his counsel. Any relationship of trust and confidence that may have developed between Maughan and Williams, even if it is entitled to consideration, is not entitled to much weight in this case.¹² Again, the case and the attorney-client relationship was in its nascent stages when the events occurred that caused Williams to halt his work on Maughan's case. This case does not present an attorney-client relationship that may require its preservation by virtue of its length and depth. *Compare State v. Husky*, 82 S.W.3d 297, 309 (Tenn. Crim. App. 2002)(trial court erroneously disqualified counsel who

¹²As detailed in point IB, controlling law does not support considering this as a factor in determining whether to disqualify appointed counsel.

one potential conflict: that Mauro could become a witness. The court did not discuss with Maughan any of the risks that it found Williams's continued representation posed. The trial court did not discuss with Maughan the actual conflict to which Williams had admitted: that he had advanced his co-counsel's and investigator's interests in defending against the witness tampering allegations over Maughan's interests in preparing his defense to the capital homicide charges. (R635, 650A:45-46.)

As to all remaining actual or possible conflicts, the trial court relied on Maughan's discussion with the very attorneys whom the court found had potential conflicts of interest and who denied and still deny that they have any conflicts (*id.*). That reliance did not cure the inadequate colloquy because the court never inquired into and the record includes none of the details of what risks counsel apprised Maughan or of what options they offered him. Based on counsel's statements to the trial court and appellate argument in Maughan's opening brief, it seems possible, if not likely, that they advised Maughan that there was no conflict, and that the motion to disqualify was merely a ruse to remove counsel.

For all of these reasons, the purported conflict waiver was insufficient to require the trial court to allow Williams to continue as Maughan's counsel.

In *Arguelles*, the Court assessed the trial court's insufficient consideration of Arguelles's waiver for harmless error. *State v. Arguelles*, 2003 UT 1 ¶¶93-94. If this Court continues to hold that an indigent defendant has a right to choose his appointed counsel, that part of *Arguelles* likely is no longer good law. In *United States v. Gonzales-Lopez*, 126 S. Ct.

2557 (2006), the United States Supreme Court held that a violation of the limited Sixth Amendment right to choose counsel is structural error.

In sum, the trial court did not abuse its discretion in disqualifying Williams. Under any standard, the actual and potential conflicts outweighed any reason to allow Williams to continue representing Maughan, and Maughan's waiver was insufficient to require the trial court to ignore the serious actual and potential conflicts.

POINT II

BECAUSE MAURO'S CONFLICTS OF INTEREST WERE EVEN MORE EGREGIOUS THAN WILLIAMS, THE TRIAL COURT SHOULD HAVE DISQUALIFIED HIM AS WELL

As demonstrated in point I, the trial court did not abuse its discretion in disqualifying Williams. However, that ruling cannot be reconciled with the trial court's decision not to disqualify Mauro. The reasons for disqualifying Mauro were even more compelling than the reasons for removing Williams.

A. Mauro's conflicts were greater than Williams's.

As established, an actual or serious potential conflict of interest weighs in favor of removing counsel. *State v. Arguelles*, 2003 UT 1 ¶¶87-88, 63 P.3d 731. A trial court "has "an independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them.'" *Id.* at ¶89.

In addition to the findings discussed in point I, the trial court found that Mauro's arrest

and potential prosecution created “a firestorm of controversy totally independent of the pending capital homicide charges;” there existed a continuing possibility of criminal prosecution in Washington or of proceedings under Utah R. Prof. Conduct 3.4; and that there is ““at least a reasonable possibility that either a serious violation of the law or ethical standards occurred”” and “a reasonable possibility that witness tampering occurred.” (R634-35 (citations omitted.) These additional reasons weighed more heavily in favor of removing Mauro than Williams.

A trial court must consider whether the continued representation ““create[s] a serious risk of undermining public confidence in the integrity of our legal system,”” which requires the trial court to take into account ““the likelihood of public suspicion or obloquy’” *State v. Johnson*, 823 P.2d 484, 490 (Utah App. 1991) (citation omitted). Accusations that counsel is implicated in criminal activity related to his client will erode his credibility as defense counsel. Capital homicide proceedings are time-consuming, expensive, and exposed to close public scrutiny. The trial court’s findings of “at least a reasonable possibility” that witness tampering occurred and, as a result, that a serious criminal and ethical violation occurred, reflects how the public will view these events. It hardly promotes public confidence in the fairness of the trial proceedings to allow the attorney and investigator implicated in those events to continue to represent Maughan. The public will view with suspicion a criminal proceeding in which an attorney who represents one party was implicated in an

attempt to restrict the other party's access to evidence.¹⁴

The trial court also found that there existed a continuing possibility of criminal prosecution in Washington State or of disciplinary proceedings under Utah R. Prof. Conduct 3.4. If either possibility materializes, counsel will be forced to withdraw, causing additional delay in the proceedings. Public confidence will not be promoted by additional delay triggered by an eventuality that was anticipated and could have been cured early on.¹⁵

In their briefs, Maughan and UACDL challenge the validity of the witness tampering

¹⁴Even if Maughan's counsel and investigator actually did not direct or even suggest to the witnesses that they should not talk to police, the controversy surrounding the arrest and the allegations support removing counsel to avoid even the appearance of impropriety. Moreover, as detailed in subsequent argument, the fair inferences from the unrefuted evidence support the trial court's conclusion of "at least a reasonable possibility" that the witness tampering occurred.

¹⁵Maughan complains that the trial court "fails to articulate a factual basis for how [rule 3.4] was violated nor identifies who on the defense team violated the rule." Appellant's Brief at 37 n.18. The answers are obvious. Rule 3.4 prohibits an attorney from, among other things, obstructing another party's access to relevant information, counseling a non-client to refrain from giving voluntary information to another party, or counseling a party to alter evidence. Wagar (a witness to Maughan's incriminating statements) and Rima reported that Mauro and Cilwick told them not to talk to police. Two other witnesses reported that they heard Mauro and Cilwick give that instruction. (R118-20, 122-24, 127. They modified this account after stating that Williams explained that they likely misunderstood what Mauro and Cilwick told them (R129-31). As detailed in subsequent argument, the modified versions do not negate finding that counsel led the witnesses to believe that they should not talk to police or to State's counsel. In addition, Wagar changed his testimony after Williams interviewed him. If believed, these facts could support finding a rule 3.4 violation by Mauro for either expressly or implicitly directing the witnesses not to talk to police and against Williams if he convinced Wagar to modify his testimony about Maughan's admissions.

The Office of Professional Conduct may take no action. The OPC or a court ultimately may conclude that no rule violation occurred. However, the potential factual basis for the violation is plain from the record.

allegations. Appellant's Brief at 35-40, Amicus Brief at 9-10. Although they are not clear on this point, they appear to challenge the trial court's finding that there was "at least a reasonable possibility that witness tampering occurred" (R635). In effect, they challenge the sufficiency of the evidence presented to the trial court to support its finding.

In order to succeed on a sufficiency challenge to a trial court's finding, Maughan and UACLD must first marshal all of the evidence supporting it. Utah R. App. P. 24(a)(9). They must "comb[] the record for and compil[e] all the evidence" that supports the trial court's finding that there is at least a reasonable possibility that witness tampering occurred. *Wilson Supply, Inc. v. Fradan Manufacturing Corp.*, 2002 UT 94 ¶21, 54 P.3d 1177; *Chen v. Stewart*, 2004 UT 82 ¶20, 100 P.3d 1177 (appellant must marshal the evidence "if a determination of the correctness of a court's application of a legal standard is extremely fact-sensitive"). They "must present, in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which supports the very findings [he] resists." *Chen v. Stewart*, 2004 UT 82 ¶77 (citation omitted). They must "temporarily remove [their] own prejudices and fully embrace [the opponent's] position'; [they] . . . must play the "devil's advocate."" *Id.* at ¶78 (citation omitted). Then, they must demonstrate that the marshaled evidence was legally insufficient to support the challenged finding. *Wilson Supply, Inc. v. Fradan Manufacturing Corp.*, 2002 UT 94 ¶21.

Neither Maughan nor UACDL have fulfilled that obligation. Both emphasize facts that, in their view, refute the trial court's finding. For example, they state that, after Mauro's

and Cilwick's arrests, Wagar and Raney denied that Mauro and Cilwick told them not to talk to police and reported that Mauro and Cilwick told them not to talk to anyone, which they believed included police. Appellant's Brief at 35-40, Amicus Brief at 9-10.

Both Maughan and UACDL ignore the evidence, much of it undisputed, that supports the finding of "at least a reasonable possibility" that witness tampering occurred. Rima did not retract her report that Mauro and Cilwick told her not to talk to police.

On balance, Wagar's and Raney's unrefuted accounts support the trial court's findings. It is true that Wagar and Raney later reported that Mauro and Cilwick did not use the words, "Don't talk to police." However, even Maughan's lawyers and UACDL do not dispute that Mauro and Cilwick told Wagar and Raney not to talk to anyone, and that they gave this direction in the same interview where it was discussed that police had been or would be trying to contact them. Wagar and Raney told Spokane police that Mauro and Cilwick told them not to talk to anyone in the same interview where Mauro and Cilwick told them that police would be trying to contact them (R129-30). Brown (Mauro's, Cilwick's, and Williams's attorney) elicited the same information from Wagar (R338, 343). Even when in a later interview with State's counsel Wagar retracted his statement that Mauro and Cilwick told him that police would be trying to contact him (Tr. February 10, 2006, at 6), he did not refute his statement to Spokane police that he told Mauro and Cilwick that police were trying to contact him in the same interview where Mauro and Cilwick told him not to talk to anyone. He also stated that Mauro and Cilwick told him not to talk to anybody in the same part of the conversation where

they told him to expect “other attorneys” to contact him. “[O]ther attorneys” would include State’s counsel; Wagar could not refuse to talk to State’s counsel any more than he could refuse to talk to their agents.

Mauro did not report to the trial court what he told the witnesses. Cilwick only denied telling the witnesses not to talk to police. He did not deny that he and Mauro told the witnesses not to talk to anyone in the same conversation where it was discussed that police had been or would be trying to contact the witnesses. (R255-62, 269-73.)

A fair reading of the unrefuted and unmarshalled evidence is that Mauro and Cilwick led the witnesses to believe that they should not talk to police. Therefore, this unrefuted and unmarshalled evidence amply supports the finding of “at least a reasonable possibility” of witness tampering. In turn, that finding weighed heavily in favor of removing Mauro.¹⁶

Moreover, the witness tampering allegations may become relevant impeachment to Wagar’s testimony. According to Spokane police, Wagar reported to them that Maughan admitted that Griffin stabbed Brad Perry during an argument over \$10 (R119). That report occurred the day after Mauro and Cilwick told the witnesses not to talk to anyone in an interview where it was discussed that police had been or would be trying to contact them (see above). In a subsequent videotaped interview, Wagar reported that Maughan told him that

¹⁶Although less clear, the inferences from evidence that Maughan ignores support the finding of a “reasonable possibility of witness tampering” by Williams. The Spokane police reports indicate that the Spokane witnesses denied that Mauro and Williams told them not to talk to police after Williams “explained” that they misunderstood what Mauro and Williams told them (R129-30). Similarly, Wagar gave a more exculpatory version of Maughan’s admissions to him after Williams interviewed him.

Brad Perry grabbed the screwdriver during a fight with Griffin (Tr. February 10, 2006).

Wagar may testify at trial he has always reported the same exculpatory version that he later told to State's counsel in the videotaped interview, including in his interviews with Maughan's counsel. If he does, and especially if Cilwick corroborates that testimony, the witness tampering allegations will be relevant. Maughan's defense team would have no reason to lead Wagar to believe that he should not talk to police if he has always reported the more exculpatory version of the Maughan's admission.

In addition, Brown's interview with Wagar, in the context of defending Mauro and Cilwick on the witness tampering allegations, provides a source of bias evidence. For example, Wagar reports that he did not want to talk to police because they were against Maughan. He also reported that he responded to a note police left to schedule an interview only because he thought that one of Maughan's attorneys had left it. He also stated that he felt bad because Maughan's attorneys got into trouble. (R335-38.) Those statements show a clear bias in favor of Maughan and anyone on Maughan's side, which the State is entitled to explore as a reason for Wagar changing his testimony about Maughan's admissions. The context in which the statements were given – an interview about the witness-tampering allegations – is admissible foundation.

Similarly, the witness tampering allegations show Wagar's proclivity to change his story to favor Maughan and anyone who is pursuing Maughan's interests. Wagar initially told Spokane police that Mauro and Cilwick told him not to talk to police. He then told police and

Brown that Mauro and Cilwick told him not to talk to anyone in the same interview where they told him that police would be trying to contact him. He then told the prosecutor that Mauro and Cilwick did not tell him that police would be trying to talk to him. Each account that Wagar gave of the witness tampering allegations becomes more favorable to Mauro and Cilwick. In turn, those changes show Maughan's bias in favor of Maughan and those who represent him, and will impeach his changed and more favorable account of Maughan's admissions about the Perry murder.

The State is entitled to explore Wagar's biases. When it does, the events concerning the witness tampering allegations will become relevant. Mauro, Cilwick, Williams, and Brown may become necessary witnesses on what happened in their interviews with Wagar.

Apart from all of the above, Mauro, like Williams, admitted to an actual conflict of interest. Mauro, through his attorney, asserted that the witness tampering allegations had "substantially interfered" with his efforts to represent Mr. Maughan (R135). Thus, Mauro already has put his interests in defending against those allegations ahead of Maughan's interests in proceeding with the criminal prosecution. That course creates an actual conflict of interest. *See, e.g., State v. Taylor*, 947 P.2d 681, 686 (Utah 1997) (counsel have a constitutional conflict of interest where they make choices that advance interests other than their client's to the detriment of their client), *cert. denied*, 525 U.S. 833 (1998).

For the same reasons argued with respect to Williams, Maughan's purported waiver was insufficient to cure the error in allowing Mauro to remain on the case. However, the lack

of a clear waiver is even more problematic with respect to Mauro. Mauro remains on the case. He has admitted to an actual conflict of interest, and the trial court correctly found that he had potential conflicts of interest. The actual conflict and the potential conflicts if they materialize, combined with the inadequate waiver, may support a claim that Maughan was denied his Sixth Amendment right to conflict-free counsel. If so, he will not have to establish that the conflict affected the trial outcome. *See, e.g., State v. Johnson*, 823 P.2d at 487-88. Thus, allowing Mauro to continue to represent Maughan even though he has actual and potential conflicts that Maughan did not waive gives to Maughan the power to overturn his conviction or sentence on direct appeal or in post-conviction and without having to prove that Mauro's continued representation affected the trial or sentencing outcome. The trial court should have eliminated that risk by removing Mauro as well as Williams.

B. Maughan has no substantial interest in allowing Mauro to continue as his counsel.

No interest in continued representation by these public defenders outweighed the reasons for removing Mauro. First, for the reasons argued in point IE, that result follows even under the *Arguelles* presumption in favor of Mauro's continued representation.

Similarly, that result follows even applying the substitute considerations for which the State advocates in point IC.¹⁷ Most of the arguments made with respect to Williams apply

¹⁷Again, the State recognizes that it did not make this argument in the trial court. However, as demonstrated in point I, it is properly before the Court as an alternative basis for affirming the trial court decision to disqualify Williams. If in affirming the part of the order on which the State won the Court reverses *Arguelles*, no reason exists not to apply that rationale to the part of the order on which the State lost. Indeed, if the Court does not follow that course, it may lead to legally inconsistent orders in the same appeal. That is,

with at least equal force to Mauro.

Maughan and UACDL argue that removing Mauro for interviewing witnesses will chill competent representation. Appellant's Brief at 37-38; Amicus Brief at 15-18. The State agrees that it would be inappropriate to remove Mauro merely for interviewing witnesses, but that is not this case. Mauro was arrested for tampering with witnesses in this case. The unrefuted evidence supports the trial court's conclusion that there was a "reasonable possibility" that Mauro and Cilwick led witnesses to believe that they should not talk to police. Removing Mauro on these facts will not chill counsel in this or other cases from interviewing witness. If it will chill anything, it will chill counsel from leading witnesses to believe that they should not speak to police or State's counsel.¹⁸

the Court may affirm the trial court's order allowing Mauro to remain on the case based on case law that the Court overturned in affirming the order to remove Williams.

¹⁸Maughan accuses the Spokane detective of arresting Mauro and Cilwick to keep them from interviewing the witnesses. Appellant's Brief at 37-38 n.19. UACDL similarly argues that the State has attempted to restrict the defense's access to witnesses, and that the Court should not permit the State to do so. Amicus Brief at 10-11. The accusations and suggestions are false. The State of Utah instructed no witnesses to refuse to talk to the defense. Spokane police arrested Mauro and Cilwick based on a report that those witnesses have not denied making. Nothing in the record supports the suggestion that the arrests were made at the State of Utah's behest, let alone to keep the defense team from interviewing the witnesses. Moreover, Mauro and Cilwick interviewed the witnesses before the arrest. Williams and Mauro's and Williams's attorneys have interviewed the witnesses extensively after the arrests and without any interference from the State of Utah.

Maughan also claims that the State was trying to "pin" some offense on the defense team. He refers to the State's initial reliance on the allegations made by Elzinga that Mauro posed as a news reporter to get a statement from her. Maughan continues that the State relied on statements proven to be false. Appellant's Brief at 43-44. What Maughan fails to disclose is that the State relied on a report that Elzinga made to police

CONCLUSION

For the reasons argued above, the Court should affirm the trial court's decision to remove Williams, but should reverse the decision to allow Mauro to remain on the case. The actual conflicts, the serious potential conflicts, the serious threat of undermining public confidence in this capital murder prosecution, and the built-in potential for reversal on plenary appeal or in post-conviction weighed heavily in favor of removing both counsel. Because the case is in its nascent stages and because the State did nothing to precipitate the events that triggered the disqualification issue, no substantial consideration militates in favor of allowing either counsel to remain on the case.

DATED June 12, 2007.

MARK SHURTLEFF
Utah Attorney General

A handwritten signature in black ink, appearing to read 'T. Brunker', written over a horizontal line.

THOMAS B. BRUNKER
Assistant Attorney General

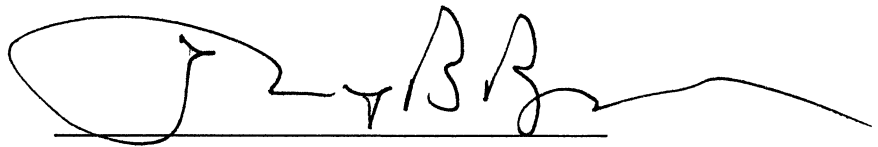
Counsel for appellee and cross-appellant

and withdrew that reliance as soon as additional investigation proved it to be incredible (R545-47; 650A:14).

Maughan further asserts that his mitigation specialist retained an attorney in the context of arguing that the State made unfounded accusations against his defense team. Appellant's Brief at 44. As demonstrated in the fact statement, she retained an attorney when the State's investigation revealed evidence that she had directed her secretary to notarize an affidavit of Maughan's that Maughan did not sign in her presence (R773A:13-14).

SERVICE CERTIFICATE

I certify that, on June 12, 2007, two true and correct copies of the foregoing BRIEF OF APPELLEE AND CROSS-APPELLANT were mailed by first-class mail, postage pre-paid, to Maughan's counsel, Mr. Richard P. Mauro, at 43 East 400 South, Salt Lake City, Utah 84111; and to Utah Association of Criminal Defense Lawyers' counsel, Mr. Kent R. Hart, 46 West Broadway, Suite 116, Salt Lake City, Utah 84101.

A handwritten signature in black ink, appearing to read "R. P. Mauro", is written over a horizontal line. The signature is stylized with a large loop at the beginning and a long, sweeping tail.

Addenda

Addendum A

UNITED STATES CONSTITUTION

Amendment VI. Jury trial for crimes and procedural rights

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

CODE OF CRIMINAL PROCEDURE

§ 77-38-7. Victim's right to a speedy trial

(1) In determining a date for any criminal trial or other important criminal or juvenile justice hearing, the court shall consider the interests of the victim of a crime to a speedy resolution of the charges under the same standards that govern a defendant's or minor's right to a speedy trial.

(2) The victim of a crime has the right to a speedy disposition of the charges free from unwarranted delay caused by or at the behest of the defendant or minor and to prompt and final conclusion of the case after the disposition or conviction and sentence, including prompt and final conclusion of all collateral attacks on dispositions or criminal judgments.

(3)(a) In ruling on any motion by a defendant or minor to continue a previously established trial or other important criminal or juvenile justice hearing, the court shall inquire into the circumstances requiring the delay and consider the interests of the victim of a crime to a speedy disposition of the case.

(b) If a continuance is granted, the court shall enter in the record the specific reason for the continuance and the procedures that have been taken to avoid further delays.

Laws 1994, c. 198, § 8; Laws 1995, c. 352, § 13, eff. May 1, 1995.

Addendum B

1
SPOKANE POLICE DEPARTMENT
ADDITIONAL REPORT

DATE/TIME: 12/6/05

CASE NO.: 05-353547

CHARGE/INCIDENT: ASSIST OTHER AGENCY

FURTHER INVESTIGATION DET. MARK BURBRIDGE 209

PERSONS:

LORRAINE W. RIMA, IF, 3/8/54

RANDY L. WAGER, WM, 4/3/67, 723 E NEBRASKA, NO PHONE

On 12/5/05 I received a request from the Box County Elder Utah Sheriffs Department, asking that I contacted Wade G. Maughan's girlfriend, Lorraine Rima, and ask her questions about Wade's drinking habits.

I contacted Rima at her residence at approximately 1130 hours. Rima was cooperative and agreed to speak with me. Rima told me that she talked to Wade yesterday (12/4/05) on the phone. He told her that things were going well, but he couldn't talk about specific stuff on the phone per directions of his attorney. Wade said he would be sending her a letter, telling her everything that he could.

Rima said she has known Wade for 15-16 years. They have been living together since September 1991.

Rima said Wade has always been a heavy drinker, but he quit drinking for several months about five years ago. This period only lasted about four or five months before he started drinking heavily again.

Rima said Wade would go through periods where he would quit drinking for a couple of days, then start up again. Rima believed the night before Wade came to talk to police and never came home, he stayed up until 0200 or 0300 hours drinking a large quantity of beer. Rima said when she woke up in the morning, Wade was already up. She believed he got up about 0700 hours.

Rima said when she walked into the kitchen, Wade was doing his daily chores and she noted there were several open beers on the counter. Rima did not know if Wade was drinking alcohol that morning. Rima said she was positive she never saw him actually drink any alcohol that morning.

Rima did say she did not smell the odor of an alcoholic beverage on Wade's breath that morning.

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SPOKANE POLICE DEPARTMENT
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FURTHER INVESTIGATION

DET. MARK BURBRIDGE 209

Rima told me approximately five or six years ago, she and Wade went to Utah. While at a party at a campground, Wade introduced her to a white male named Glen. Rima said Glen scared her and that he was a very scary looking person.

Rima said Wade and Glen stepped off by themselves and had a very private, whispered conversation. When she approached them, they stopped talking immediately. Glen took Wade aside so that she couldn't hear what was being said.

Rima mentioned a subject named Randy Wager, who has come to her since Wade's arrest. He said Wade told him about a robbery that had occurred when he was younger in Utah.

Rima provided me with a description of Randy's address. I responded to that location and attempted to make contact. No one answered the door at that location. I did leave a note requesting a phone call.

On 12/6/05 I checked my voice mail and found that I had received a phone call from a male identifying himself as Randy Wager who said he would speak with me.

On 12/6/05 at approximately 0830 hours Det. Madsen and I went to 723 E. Nebraska and contacted Randy Wager. The first thing Wager told me was that he had already spoken to Wade Maughan's attorney and investigator. They had told him not to speak with police. I informed Wager that he was a witness in this case, not a defendant, and that he did not have the right to remain silent. I told him that he could get himself into trouble for Obstruction of Justice charges.

Wager then told me that he, his cousin Ashley and Lorraine Rima went to visit Wade in jail. Wade told them that he was with a friend of his, Glen, and another subject he did not know the name of but described him as a blonde male, and they all went to a convenience store. Wade told them that Glen got into an argument with the clerk at the convenience store over \$10, so Glen stabbed the guy, killing him. Wager said this was all Wade told him, and that Wade did not tell him specifics about what he, Wade, had done. Wager was unable to look me in the eye and was very evasive during my questioning.

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SPOKANE POLICE DEPARTMENT
ADDITIONAL REPORT

DATE/TIME: 12/6/05

CASE NO.: 05-353547

CHARGE/INCIDENT: ASSIST OTHER AGENCY

FURTHER INVESTIGATION

DET. MARK BURBRIDGE 209

I provided Wager with my name and phone number and asked him to give that to the Utah investigators and attorney who were still supposed to be in Spokane, to interview additional people on today's date.

I asked Wager if he knew where his cousin Ashley was. He said she was somewhere in Clarkston and he didn't know where, as the family was attempting to contact her to get her to come back to Spokane.

Wager then remembered that while he was talking with Wade, Wade told them that he was drunk when the murder happened and he didn't remember anything about it until the police started showing him pictures on the day he was arrested.

FURTHER INVESTIGATION

DETECTIVE MARK BURBRIDGE 209
Major Crimes Unit
12/6/05 sc

Addendum C

STATEMENT OF INVESTIGATING OFFICER
AFFIDAVIT OF FACTS

STATE OF WASHINGTON)
COUNTY OF SPOKANE)

REPORT NUMBER: 05-387538

DEFENDANT: Richard P. Mauro, WM, 10/23/59

DEFENDANT: Theodore T. Cilwick, WM, 12/06/54

The undersigned, a law enforcement officer, competent to testify, states as follows:
That he/she believes a crime was committed by the above named
defendant/defendants in the City and County of Spokane, State of Washington,
because:

DETECTIVE MARK BURBRIDGE WILL TESTIFY:

He was assisting Box Elder County Utah Sheriff Deputies with a homicide investigation involving Wade Maughan who was facing the death penalty for a robbery/homicide. Detective Burbridge will testify that Deputy Scott Lewis of the Box Elder County Sheriff's Dept. asked him to contact Lorraine Rima and conduct a followup interview. Detective Burbridge will testify that Ms. Rima told him that a friend of hers and Wade's by the name of Randy Wager had told her that while he was visiting Wade in jail after his arrest. Wade told him about the robbery and murder in Utah. Detective Burbridge will testify that on 12/05/05 he attempted to contact Randy Wager at 723 E. Nebraska and found no one at home so he left a detailed note on the door requesting a phone call from Mr. Wager.

Detective Burbridge will testify that on 12/06/05 when he arrived at work, he found a phone message from Randy Wager saying he would be glad to speak with him about what Wade Maughan had told him while in jail.

Detective Burbridge will testify he and Detective Madsen went to 723 E. Nebraska and contacted Wade Maughan and his mother Alta Raney in their residence. Mr. Wager immediately told Detective Burbridge that Wade Maughan's attorney and a detective

from Utah told him not to talk to the police about what Wade had told them saying he could get in trouble. Wager said that the attorney and detective contacted him during the evening hours of 12/05/05.

Detective Burbridge will testify that Ms. Raney said she was present when this conversation occurred and heard the attorney and the investigator tell her son not to speak with the police.

DETECTIVE T. H. MADSEN WILL TESTIFY:

He conducted a followup interview with Randy Wager and Alta Raney on 12/08/05 and Mr. Wager told him he had been visited by an attorney and an investigator who told him that he misunderstood the first two investigators and what they really told him was not to talk to anyone except the police. Mr. Wager told Detective Madsen he is now confused about what he was really told that day, but he does remember telling the officers he had been told not to speak to the police, but he now believes he misunderstood the attorney and the investigator. Detective Madsen will testify he interviewed Alta Raney and she now remembers that the attorneys told them not to talk to anyone and they thought that meant including the police. Detective Madsen will testify to statements made by Randy Wager and Alta Raney during their first contact on 12/06/05.

RANDY WAGER WILL TESTIFY:

On 12/05/05, he arrived home and found a note addressed to him from Detective Burbridge asking him to call him and leave a message reference being interviewed by about statements being made to him by Wade Maughan. Mr. Wager will testify that he left a voice message on Detective Burbridge's phone mail indicating that he would talk with the police. Mr. Wager was contacted by Robert Mauro and Theodore Cilwick at his residence on 12/05/05. Mr. Wager will testify that he originally believed they had ordered him not to talk to the police. Mr. Wager now believes this was a misunderstanding and he was told not to talk to anyone except the police. Mr. Wager will testify that on 12/06/05 he was contacted at his residence by Detectives Burbridge and Madsen and he initially told them the attorneys from Utah had ordered him not to speak with the police.

Randy Wager will testify that on 12/07/05, he was contacted by an attorney who discussed with him the conversations he had with the first set of attorneys and they told him it was a misunderstanding and those attorneys explained it was o.k. for him to talk to the police, but he shouldn't talk to anyone else. Mr. Wager now believes it was a misunderstanding.

ALTA RANEY WILL TESTIFY:

She told Detectives Burbridge and Madsen she was present when the first set of attorneys told her son, Randy Wager, not to talk to the police. Ms. Raney will testify

that she was also present when the second set of investigator and attorney showed up at her house and explained to her that they were confused about what the first set of attorneys had said and she now believes the first set of attorneys told them not to speak with anyone and they just assumed that included the police.

Detective Mark Burbridge will testify that he and Sgt. Joe Peterson contacted Lorraine Rima at her residence on 12/06/05 and she was somewhat hostile on this contact. Ms. Rima said Wade's attorney and a detective from Utah had taken letters and belongings that were hers without her permission. Ms. Rima then said that these attorneys had ordered her not to speak with the police and indicated she could go to jail if she did. Detective Burbridge will testify that Ms. Rima identified Kimberly Jeffreys as a friend, who was staying at the apartment. Ms. Jeffreys was present when these statements were made. Detective Burbridge will testify that he interviewed Ms. Jeffreys and to statements made by her.

LORRAINE RIMA WILL TESTIFY:

Ms. Rima will testify that on 12/05/05 she was contacted at her residence by Robert Mauro and Theodore Cilwick who identified themselves as Wade Maughan's attorney and as a detective from Utah. Ms. Rima will testify that both subjects told her not to talk to the police and indicated she could go to jail.

KIMBERLY JEFFREYS WILL TESTIFY:

She is a friend of Lorraine Rima's and was staying at the apartment while she visited for several days. Ms. Jeffreys will testify she was present when the attorneys first visited with Ms. Rima and told her not to speak with the police.

Detective Burbridge will testify he interviewed Ms. Jeffreys a second time on 12/07/05 and she believes she was now confused and they said don't talk with anyone and she jumped to the conclusion that included the police.

SGT. JOE PETERSON WILL TESTIFY:

He was present on 12/06/05 at Lorraine Rima's apartment when Ms. Rima told Detective Burbridge that she had been ordered by the attorneys not to speak with the police.

DETECTIVE MARK BURBRIDGE WILL TESTIFY:

Detective Mark Burbridge will testify that on 12/14/05, Lorraine Rima came to the police station and consented to a videotaped interview. Ms. Rima related that she remembers telling Detective Burbridge that the attorneys had ordered her not to speak with the police, but when asked if they had indicated she would be in trouble if she did, she said she didn't remember that occurring. Detective Burbridge will testify that later on during this interview, Ms. Rima indicated that at some point the attorney and detective from

Utah told her she could go to jail if she talked about this incident. Detective Burbridge will testify that during this videotaped interview, Ms. Rima seemed easily confused, but was adamant that the attorneys had told her that she was not to talk to the police.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. (9A.72.085)

DATE 12-15-05 PLACE Spokane, WA SIGNATURE 

Addendum D

1
**SPOKANE POLICE DEPARTMENT
ADDITIONAL REPORT**

DATE/TIME: 12/6/05

CASE NO.: 05-353547

CHARGE/INCIDENT: ASSIST OTHER AGENCY

FURTHER INVESTIGATION

DET. MARK BURBRIDGE 209

PERSONS:

LORRAINE W. RIMA, IF, 3/8/54

RANDY L. WAGER, WM, 4/3/67, 723 E NEBRASKA, NO PHONE

On 12/5/05 I received a request from the Box County Elder Utah Sheriffs Department, asking that I contacted Wade G. Maughan's girlfriend, Lorraine Rima, and ask her questions about Wade's drinking habits.

I contacted Rima at her residence at approximately 1130 hours. Rima was cooperative and agreed to speak with me. Rima told me that she talked to Wade yesterday (12/4/05) on the phone. He told her that things were going well, but he couldn't talk about specific stuff on the phone per directions of his attorney. Wade said he would be sending her a letter, telling her everything that he could.

Rima said she has known Wade for 15-16 years. They have been living together since September 1991.

Rima said Wade has always been a heavy drinker, but he quit drinking for several months about five years ago. This period only lasted about four or five months before he started drinking heavily again.

Rima said Wade would go through periods where he would quit drinking for a couple of days, then start up again. Rima believed the night before Wade came to talk to police and never came home, he stayed up until 0200 or 0300 hours drinking a large quantity of beer. Rima said when she woke up in the morning, Wade was already up. She believed he got up about 0700 hours.

Rima said when she walked into the kitchen, Wade was doing his daily chores and she noted there were several open beers on the counter. Rima did not know if Wade was drinking alcohol that morning. Rima said she was positive she never saw him actually drink any alcohol that morning.

Rima did say she did not smell the odor of an alcoholic beverage on Wade's breath that morning.

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SPOKANE POLICE DEPARTMENT
ADDITIONAL REPORT

DATE/TIME: 12/6/05

CASE NO.: 05-353547

CHARGE/INCIDENT: ASSIST OTHER AGENCY

FURTHER INVESTIGATION

DET. MARK BURBRIDGE 209

Rima told me approximately five or six years ago, she and Wade went to Utah. While at a party at a campground, Wade introduced her to a white male named Glen. Rima said Glen scared her and that he was a very scary looking person.

Rima said Wade and Glen stepped off by themselves and had a very private, whispered conversation. When she approached them, they stopped talking immediately. Glen took Wade aside so that she couldn't hear what was being said.

Rima mentioned a subject named Randy Wager, who has come to her since Wade's arrest. He said Wade told him about a robbery that had occurred when he was younger in Utah.

Rima provided me with a description of Randy's address. I responded to that location and attempted to make contact. No one answered the door at that location. I did leave a note requesting a phone call.

On 12/6/05 I checked my voice mail and found that I had received a phone call from a male identifying himself as Randy Wager who said he would speak with me.

On 12/6/05 at approximately 0830 hours Det. Madsen and I went to 723 E. Nebraska and contacted Randy Wager. The first thing Wager told me was that he had already spoken to Wade Maughan's attorney and investigator. They had told him not to speak with police. I informed Wager that he was a witness in this case, not a defendant, and that he did not have the right to remain silent. I told him that he could get himself into trouble for Obstruction of Justice charges.

Wager then told me that he, his cousin Ashley and Lorraine Rima went to visit Wade in jail. Wade told them that he was with a friend of his, Glen, and another subject he did not know the name of but described him as a blonde male, and they all went to a convenience store. Wade told them that Glen got into an argument with the clerk at the convenience store over \$10, so Glen stabbed the guy, killing him. Wager said this was all Wade told him, and that Wade did not tell him specifics about what he, Wade, had done. Wager was unable to look me in the eye and was very evasive during my questioning.

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SPOKANE POLICE DEPARTMENT
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FURTHER INVESTIGATION

DET. MARK BURBRIDGE 209

I provided Wager with my name and phone number and asked him to give that to the Utah investigators and attorney who were still supposed to be in Spokane, to interview additional people on today's date.

I asked Wager if he knew where his cousin Ashley was. He said she was somewhere in Clarkston and he didn't know where, as the family was attempting to contact her to get her to come back to Spokane.

Wager then remembered that while he was talking with Wade, Wade told them that he was drunk when the murder happened and he didn't remember anything about it until the police started showing him pictures on the day he was arrested.

FURTHER INVESTIGATION

DETECTIVE MARK BURBRIDGE 209
Major Crimes Unit
12/6/05 sc

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that she was also present when the second set of investigator and attorney showed up at her house and explained to her that they were confused about what the first set of attorneys had said and she now believes the first set of attorneys told them not to speak with anyone and they just assumed that included the police.

Detective Mark Burbridge will testify that he and Sgt. Joe Peterson contacted Lorraine Rima at her residence on 12/06/05 and she was somewhat hostile on this contact. Ms. Rima said Wade's attorney and a detective from Utah had taken letters and belongings that were hers without her permission. Ms. Rima then said that these attorneys had ordered her not to speak with the police and indicated she could go to jail if she did. Detective Burbridge will testify that Ms. Rima identified Kimberly Jeffreys as a friend, who was staying at the apartment. Ms. Jeffreys was present when these statements were made. Detective Burbridge will testify that he interviewed Ms. Jeffreys and to statements made by her.

LORRAINE RIMA WILL TESTIFY:

Ms. Rima will testify that on 12/05/05 she was contacted at her residence by Robert Mauro and Theodore Cilwick who identified themselves as Wade Maughan's attorney and as a detective from Utah. Ms. Rima will testify that both subjects told her not to talk to the police and indicated she could go to jail.

KIMBERLY JEFFREYS WILL TESTIFY:

She is a friend of Lorraine Rima's and was staying at the apartment while she visited for several days. Ms. Jeffreys will testify she was present when the attorneys first visited with Ms. Rima and told her not to speak with the police.

Detective Burbridge will testify he interviewed Ms. Jeffreys a second time on 12/07/05 and she believes she was now confused and they said don't talk with anyone and she jumped to the conclusion that included the police.

SGT. JOE PETERSON WILL TESTIFY:

He was present on 12/06/05 at Lorraine Rima's apartment when Ms. Rima told Detective Burbridge that she had been ordered by the attorneys not to speak with the police.

DETECTIVE MARK BURBRIDGE WILL TESTIFY:

Detective Mark Burbridge will testify that on 12/14/05, Lorraine Rima came to the police station and consented to a videotaped interview. Ms. Rima related that she remembers telling Detective Burbridge that the attorneys had ordered her not to speak with the police, but when asked if they had indicated she would be in trouble if she did, she said she didn't remember that occurring. Detective Burbridge will testify that later on during this interview, Ms. Rima indicated that at some point the attorney and detective from

Addendum E

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**SPOKANE POLICE DEPARTMENT
ADDITIONAL REPORT****DATE/TIME:** 12/06/05**CASE NO.:** 05-387538**CHARGE/INCIDENT:** Tampering With A Witness**FURTHER INVESTIGATION:** DETECTIVE JOE PETERSON #076

On 12/06/05 at approximately 1230 hours, Detective Burbridge requested that I accompany him to 1325 W. Dean Apt. A, while he spoke with Lorraine Rima. At that location, Lorraine Rima answered the door and told Detective Burbridge that she had been contacted by an attorney named Richard Mauro and a second subject who had identified himself as a police detective. Rima said both of these people told her not to talk with the police about the investigation involving the homicide. Several other people were present when this occurred and they gave Detective Burbridge further information regarding this situation.

At approximately 1700 hours, Detective Burbridge and I contacted Richard Mauro and a person named Theodore T. Silwick, 12/06/54. We identified ourselves as police officers and Detective Burbridge stated he wished to talk about their contacts with witnesses on this date. Richard Mauro immediately said they would not speak with us. Both subjects were arrested and I searched Mr. Silwick. Mr. Silwick had folded currency in his front pocket which I counted in front of him and found it to be \$75. Both subjects were booked for tampering with a witness.

FURTHER INVESTIGATION

SGT. JOE PETERSON #076
MAJOR CRIMES UNIT
BB 12/07/05

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1
SPOKANE POLICE DEPARTMENT
ADDITIONAL REPORT

DATE/TIME: 12/08/05

CASE NO.: 05-387538

CHARGE/INCIDENT: Tampering With A Witness

FURTHER INVESTIGATION: DETECTIVE T. H. MADSEN #366

PERSON: Alta Raney, WF, 3/17/46
Randy L. Wager, WM, 4/03/67

On 12/08/05, myself and Sgt. Peterson drove to 723 E. Nebraska to reinterview Randy Wager and Alta Raney. Raney answered the door and advised Wager was in Holy Family Hospital because he had had a seizure earlier on that day after being interviewed by defense attorneys representing Richard Mauro, Theodore Cilwick and Wade Maughan. Alta allowed us into the residence. I told Alta I wanted to interview her further reference the first conversation she had overheard between her son, Randy Wager, and Cilwick and Mauro.

Alta Raney told me she was present when they were at "Stubby's" residence. She stated while they were there, she heard Randy and Stubby talking to the investigator and the attorney about Wade. She also heard conversation by Randy that the police had already been by the E. Nebraska residence and were trying to contact them. The attorney told them that the police would most likely be trying to talk to them. The attorney and the investigator also told them not to talk to anyone about the case. She stated they believed they had been told not to talk to the police at that time. After 12/08/05, when a second group of attorney's contacted her and her son. Those attorneys explained there was a misunderstanding and it was o.k. for them to talk to the police. Raney told me she was now confused and believes both she and her son must have misunderstood what the original attorneys told them. I asked her if the attorneys told them to talk to the police. She said no. The attorneys told them not to talk to anyone and they thought that meant including the police. I again asked her if that would have been the initial conversation where the attorney had already talked about the police contacting them. She stated yes. I asked if that was when the attorneys directed them not to talk to anyone. She stated yes. She stated after talking to the second group of attorneys on this day, she believed she have been mistaken as to what the first group of attorneys had told them.

I asked her if she knew who the second group of attorneys were. She stated no and they told her they were from Salt Lake and were Wade's attorneys and worked with Mr. Mauro, the first attorney she had talked to.

On 12/08/05, myself and Sgt. Peterson interviewed Randy Wager at Holy Family Hospital Emergency Room. Wager said he recalled talking to Detective Burbridge and I earlier in the week. He admitted recalling telling us he had been

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**SPOKANE POLICE DEPARTMENT
ADDITIONAL REPORT**DATE/TIME: 12/08/05CASE NO.: 05-387538CHARGE/INCIDENT: Tampering With A WitnessFURTHER INVESTIGATION: DETECTIVE T. H. MADSEN #366

directed by Wade's attorneys not to talk to the police. I asked him what he had based that statement on and he told me he had based it on the following.

Wager stated he had talked to Wade's attorney (Mauro) and investigator (Cilwick) prior to talking to the police. He knew police were trying to contact him because of a note left by Detective Burbridge on his door. When he talked to Mauro and Cilwick, he told both of them that the police were trying to contact him. Wager stated in the course of that conversation, he stated the police were looking for him. The attorney and the investigator said the police would probably be trying to get a hold of him. In the course of that conversation after the police were mentioned, he admitted the attorney and investigator directed them not to talk to anyone about the case. After that conversation, he believed he had been instructed not to talk to the police, but now thinks he was in error. I asked why. He stated because on 12/08/05 two other attorneys came to his mother's house and talked to both he and his mother. Those attorneys explained to him that it was most likely a misunderstanding. The attorneys were trying to represent Wade and the police would be talking to them. They did not have to talk to anyone without an attorney, but the attorneys on 12/08/05 told them to talk to the police.

Wager stated he did not want to get Wade's attorneys in trouble or be a problem. He believed he may have misunderstood them. Wager then stated what he thought they meant was not to talk to anyone but the police. Again I told Wager to remember specifically what the first group of attorneys and investigator had told him. He stated they told us not to talk to anyone. I asked him if that happened after you had mentioned the police were trying to talk to you and he conceded that it did. I asked him if he thought the second group of attorneys had tried to manipulate him as to what he had heard. He stated no. I asked Wager if he recalled looking at Detective Burbridge and telling us he had been directed not to talk to the police and he stated yes. I asked if he was lying at that time. He told me no. He had believed he had been instructed not to talk to the police, but after 12/08/05, he may have misunderstood them. That concluded my interview with Randy Wager.

Wager told me after talking to the second group of attorneys, he also remembered Wade Maughan telling him approximately one year ago about a

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SPOKANE POLICE DEPARTMENT
ADDITIONAL REPORT

DATE/TIME: 12/08/05

CASE NO.: 05-387538

CHARGE/INCIDENT: Tampering With A Witness

FURTHER INVESTIGATION: DETECTIVE T. H. MADSEN #366

robbery of a liquor store that Maughan had committed several years earlier. He claimed to recall nothing else about the homicide in Utah.

FURTHER INVESTIGATION

DETECTIVE T. H. MADSEN #366
MAJOR CRIMES UNIT
12BB 12/09/05

Addendum F

COPY OF TRANSCRIPT

INTERVIEW - LORRAINE RIMA

December 14, 2005



170 South Main Street, Suite 300
Salt Lake City, Utah 84101

P R O C E E D I N G S

DETECTIVE BURBRIDGE: Okay. Lorraine, I've turning the video on. It is recording so we have it on tape. I do have your permission to record the interview, correct?

MS. RIMA: (Inaudible.)

DETECTIVE BURBRIDGE: It is about eleven o'clock in the morning. Present is Lorraine Rima, Scott --

MR. STAAB: Staab.

DETECTIVE BURBRIDGE: Staab, S-T-A-A-B?

MR. STAAB: That's correct.

DETECTIVE BURBRIDGE: Ms. Rima's attorney. And so we're here solely today to talk about your interaction with Mr. Mauro and Mr. Cilwick who were an attorney and investigator from Utah that came and talked with you and Randy Wagar?

MS. RIMA: Yeah.

DETECTIVE BURBRIDGE: Do you remember my coming to your apartment with a bald guy, my sergeant? I introduced you, but I don't know if you remember that.

MS. RIMA: Uh-huh. Yeah, I do.

DETECTIVE BURBRIDGE: Do you remember what you told me when I came to the door there and I asked

1 to talk to you that afternoon?

2 MS. RIMA: Huh-uh.

3 DETECTIVE BURBRIDGE: Did you say
4 something similar to me like, "Mark, I can't talk to
5 you anymore; they told me I would be in trouble if I
6 talked to you?"

7 MS. RIMA: No, I didn't say I would get in
8 trouble.

9 DETECTIVE BURBRIDGE: "I can't talk to
10 you"?

11 MS. RIMA: No. I just said that I
12 can't -- they said I couldn't talk to nobody.

13 DETECTIVE BURBRIDGE: You said I couldn't
14 talk to the police?

15 MS. RIMA: Yeah.

16 DETECTIVE BURBRIDGE: Is that what you
17 said?

18 MS. RIMA: No, not the police. That I
19 can't interview with them guys. I mean, they said
20 that I will go to jail if I (inaudible). He left
21 on -- I don't even know what day he left.

22 DETECTIVE BURBRIDGE: The day prior to him
23 leaving, prior to me and Rusty and my sergeant, I
24 came by.

25 MS. RIMA: Yeah.

1 DETECTIVE BURBRIDGE: Knocked on your
2 door?

3 MS. RIMA: Uh-huh.

4 DETECTIVE BURBRIDGE: And Randy was
5 sitting there?

6 MS. RIMA: Oh, yeah, Randy was there, me
7 and Maughan.

8 DETECTIVE BURBRIDGE: And your friend from
9 Montana was there?

10 MS. RIMA: Yes.

11 DETECTIVE BURBRIDGE: Was her name
12 Rebecca? Or what was her name again? I've got it
13 written down on her form.

14 MS. RIMA: Rebecca from Montana.

15 DETECTIVE BURBRIDGE: She was the one that
16 was visiting with the kids.

17 MS. RIMA: Oh, yeah, my twins. That's
18 Kim.

19 DETECTIVE BURBRIDGE: Kim.

20 MS. RIMA: Kimberly.

21 DETECTIVE BURBRIDGE: I recall you saying
22 and my sergeant recalls you saying, "I can't talk to
23 the police. They told me I couldn't."

24 MS. RIMA: They -- no. My attorney
25 told -- not my attorney, but the dude said that I --

1 he don't want me to talk to them. It would look
2 better on my case, on me, so I can't.

3 DETECTIVE BURBRIDGE: On you? How could
4 you be in trouble?

5 MS. RIMA: Well, I don't know. That's
6 what I'm here for today. I'm thinking, what did I
7 do?

8 MR. STAAB: She may think she's in trouble
9 because she's in a police interview setting so...

10 MS. RIMA: Yeah.

11 DETECTIVE BURBRIDGE: Lorraine, you're not
12 in any trouble, period. You're a witness and a
13 witness only, just let me be clear.

14 MS. RIMA: Okay.

15 DETECTIVE BURBRIDGE: You're not in any
16 trouble in any manner, all right?

17 MS. RIMA: Uh-huh.

18 DETECTIVE BURBRIDGE: You never have been.
19 You're a very nice lady. You've always been honest
20 with me.

21 MS. RIMA: Yeah.

22 DETECTIVE BURBRIDGE: You may get confused
23 easily or -- but --

24 MS. RIMA: Yeah, I do a lot. I didn't
25 take my medicine today and I'm kind of in a fog here.

1 DETECTIVE BURBRIDGE: But you have never
2 been in trouble with me ever.

3 MS. RIMA: No.

4 DETECTIVE BURBRIDGE: I have always been
5 honest with you and I think you try to be honest with
6 me.

7 MS. RIMA: Uh-huh.

8 DETECTIVE BURBRIDGE: Okay. After they
9 were arrested, did they come back and see you or did
10 different attorneys or investigators come and see
11 you?

12 MS. RIMA: It was another detective. I
13 don't know his name, over there.

14 DETECTIVE BURBRIDGE: Okay. And what kind
15 of conversation occurred at the house?

16 MS. RIMA: At my house?

17 DETECTIVE BURBRIDGE: Or where did it
18 happen at?

19 MS. RIMA: Let me think. I don't know.
20 Who did you send?

21 DETECTIVE BURBRIDGE: They day after they
22 were arrested, I arrested the attorney and the
23 investigator from Utah.

24 MS. RIMA: Uh-huh. That's because they
25 came into house and they got my books and my cards

1 and all my letters from Wade.

2 DETECTIVE BURBRIDGE: Do you remember
3 talking to me about that?

4 MS. RIMA: Uh-huh.

5 DETECTIVE BURBRIDGE: You were kind of
6 angry that they took your stuff?

7 MS. RIMA: Yeah.

8 DETECTIVE BURBRIDGE: You said they didn't
9 have your permission --

10 MS. RIMA: Yes.

11 DETECTIVE BURBRIDGE: -- to take your
12 stuff?

13 MS. RIMA: Yes. They just wanted to look
14 through it. But they took it all with them.

15 DETECTIVE BURBRIDGE: Okay. Is that the
16 same time you told me that "I can't talk to you
17 because they told me I can't talk with the police"?

18 MS. RIMA: Yeah. After they took all my
19 stuff, them guys told me, the guy right here.

20 DETECTIVE BURBRIDGE: All right. The very
21 next day, did a different investigator come and see
22 you?

23 MS. RIMA: Yeah.

24 DETECTIVE BURBRIDGE: And what did he say
25 to you?

1 MS. RIMA: He told me that they have the
2 two guys in jail. I don't know what they were in
3 there for. He told me that.

4 DETECTIVE BURBRIDGE: And did he try to
5 clarify what they meant or maybe clarify a
6 misunderstanding with you?

7 MS. RIMA: Huh-uh.

8 DETECTIVE BURBRIDGE: No?

9 MS. RIMA: No.

10 DETECTIVE BURBRIDGE: Okay. Anything else
11 you want to tell me?

12 MS. RIMA: No. Just that I'm worried
13 about Wade and I don't think he'll ever come home
14 ever.

15 DETECTIVE BURBRIDGE: Well, I'm not a
16 judge or a jury and I'm not the prosecutor down
17 there. So I don't know all the facts of the case,
18 Lorraine.

19 MS. RIMA: Yeah.

20 DETECTIVE BURBRIDGE: I told you what I
21 knew when I came and saw you the day before all this
22 started.

23 MS. RIMA: Who is them two guys?

24 DETECTIVE BURBRIDGE: One of them is one
25 of Wade's co-counsel, he's an attorney, and the other

1 is a private investigator working for that attorney.

2 MS. RIMA: And there was a detective, a
3 sergeant and -- a detective, sergeant, you and some
4 other guy came over to see me. I've got their cards
5 at home.

6 DETECTIVE BURBRIDGE: Huh. I would like
7 to see them.

8 MS. RIMA: Yeah, there's two more.

9 DETECTIVE BURBRIDGE: What are they saying
10 to you?

11 MS. RIMA: They just said not to go get --
12 he told me not to go get really happy to get Wade
13 home, he says, because he ain't coming home. Because
14 I ask him that.

15 DETECTIVE BURBRIDGE: The reason I ask you
16 some of this is because Randy told us, Randy Wagar,
17 your friend and Wade's friend?

18 MS. RIMA: Uh-huh.

19 DETECTIVE BURBRIDGE: That the day after
20 the attorneys were arrested he was visited by an
21 investigator and an attorney --

22 MS. RIMA: Yeah.

23 DETECTIVE BURBRIDGE: -- from Utah who
24 told him that it was a misunderstanding between the
25 previous attorney and investigator and Randy, and

1 that they told him not to talk to anybody.

2 MS. RIMA: Uh-huh.

3 DETECTIVE BURBRIDGE: But they had to talk
4 to the police. And so I'm just wondering if that
5 conversation occurred with you.

6 MS. RIMA: Huh-uh.

7 DETECTIVE BURBRIDGE: Nothing like that?

8 MS. RIMA: No.

9 DETECTIVE BURBRIDGE: Okay. Do you think
10 you misunderstood them at all when they talked to you
11 that day?

12 MS. RIMA: I knew about it. I just didn't
13 want to tell them. I was embarrassed to talk because
14 I didn't feel good.

15 DETECTIVE BURBRIDGE: Did you
16 misunderstand them when they were talking about
17 "Don't talk to anybody" or "Don't talk to the
18 police"?

19 MS. RIMA: I didn't even hear them say
20 that.

21 DETECTIVE BURBRIDGE: What's your mem --
22 what's your memory --

23 MS. RIMA: I need to stop. I need to take
24 my medicine.

25 DETECTIVE BURBRIDGE: I'm sorry. What is

1 your memory of the exact wording they used with you
2 that day, "Don't talk to anybody" or "Don't talk to
3 the police"?

4 MS. RIMA: They said I can't, not to talk
5 to the policemen.

6 DETECTIVE BURBRIDGE: Okay.

7 MS. RIMA: And not to let them guys taking
8 any more of my stuff at home. Because they didn't
9 have a search warrant, they just took it.

10 DETECTIVE BURBRIDGE: No. I'm talking
11 about the guys that took your stuff?

12 MS. RIMA: Uh-huh. That's what I'm
13 talking about.

14 DETECTIVE BURBRIDGE: Okay. What did they
15 say to you that day? What's your exact wording?

16 MR. STAAB: If you remember.

17 DETECTIVE BURBRIDGE: If you remember
18 about what they said?

19 MS. RIMA: I don't remember.

20 DETECTIVE BURBRIDGE: Okay.

21 MS. RIMA: I don't know. I'm upset with
22 all this stuff.

23 DETECTIVE BURBRIDGE: I understand. You
24 would like a nice quiet life and things are
25 complicated.

1 MS. RIMA: (Inaudible) in my house.

2 DETECTIVE BURBRIDGE: Okay. Anything else
3 that you can think of, Lorraine, that I need to know?

4 MS. RIMA: Huh-uh.

5 DETECTIVE BURBRIDGE: Anything that's
6 concerning you that I can help you with?

7 MS. RIMA: No.

8 DETECTIVE BURBRIDGE: All right.

9 MS. RIMA: Not at all.

10 DETECTIVE BURBRIDGE: That was pretty
11 painless, wasn't it?

12 MS. RIMA: Uh-huh.

13 DETECTIVE BURBRIDGE: Anything, any
14 questions for me, Scott?

15 MR. STAAB: Not at this time. Other than
16 if you need to speak to her again you've got my card.
17 I will gladly set time and place when you --

18 DETECTIVE BURBRIDGE: I can't see a time
19 we need to talk unless, of course, the prosecutor's
20 office decides to file and then I'll be calling her.

21 But if you would prefer I talk to Scott
22 before I talk to you even just to stop by and say
23 "Hi, have you heard from Wade," because you are his
24 girlfriend, I am law enforcement.

25 MS. RIMA: Yeah.

1 DETECTIVE BURBRIDGE: I understand the
2 concerns there. But does Scott know we have
3 a previous -- not a relationship, but a previous -- I
4 don't want to say friendship either, but an
5 acquaintance between each other prior to this?

6 MS. RIMA: Yeah.

7 DETECTIVE BURBRIDGE: She was a witness in
8 a homicide transaction about a year ago.

9 MR. STAAB: Yeah.

10 DETECTIVE BURBRIDGE: December 26 of '03
11 and we got to -- and I talked to you probably almost
12 a dozen times over a period of a couple of years --

13 MS. RIMA: Uh-huh.

14 DETECTIVE BURBRIDGE: -- about stuff. So
15 I knew her, I knew Wade and so --

16 MS. RIMA: We got pretty close
17 (inaudible.)

18 DETECTIVE BURBRIDGE: -- (inaudible) what
19 happened across the street she saw or -- she was
20 actually a pretty important witness in that one so...

21 MS. RIMA: Yeah. That baby died in my
22 arms.

23 DETECTIVE BURBRIDGE: And resulted in a
24 conviction, I think. So...

25 MR. STAAB: Okay.

1 DETECTIVE BURBRIDGE: What kind of
2 medication are you taking, Lorraine?

3 MS. RIMA: Oh, gees. I've got about 13,
4 14 medicines I got to take.

5 DETECTIVE BURBRIDGE: Which ones affects
6 your memory or helps make things clearer for you?

7 MS. RIMA: My Prednisone, when I take them
8 they make me lose my memory.

9 DETECTIVE BURBRIDGE: Oh, okay.

10 MS. RIMA: And then the other stuff don't
11 bother me, you know, except when I take that so I can
12 kind of (inaudible).

13 DETECTIVE BURBRIDGE: How come you take so
14 much medication?

15 MS. RIMA: Because I've got lupus.

16 DETECTIVE BURBRIDGE: Oh, I'm sorry.

17 MS. RIMA: And that's (inaudible)

18 DETECTIVE BURBRIDGE: (Inaudible).

19 MS. RIMA: Uh-huh. Like yesterday and the
20 day before I was so sick and now today I feel better.

21 DETECTIVE BURBRIDGE: All right. That's
22 it. We're done. Let me turn off the recording
23 machine and I'll walk you guys out.

24 MR. STAAB: Can I walk you home?

25 MS. RIMA: I can walk over there. How do

1 you get out of here?

2 MR. STAAB: Right here. I think he can
3 let us out this way.

4 MS. RIMA: Oh.

5 (End of recording.)

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Addendum G

BROWN, BRADSHAW & MOFFAT, L.L.P.

ATTORNEYS AT LAW

10 WEST BROADWAY, SUITE 210

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ANNETH R. BROWN
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MARK R. MOFFAT
JENNIFER L. LARSEN
MICHAEL T. HOLJL

December 27, 2005

*Via Facsimile Transmission - (435) 734-3374 and (801) 399-9954
Original to Follow Via First Class Mail*

Mr. H. Thomas Stevenson
Mr. Brad C. Smith
Deputy Box Elder County Attorneys
Stevenson & Smith
3986 Washington Blvd.
Ogden, Utah 84403

Re: State v. Wade Maughan

Gentlemen:

I am in receipt of a letter from your office dated December 19, 2005, addressed to my client Richard Mauro. Through this letter, your office has informed Mr. Mauro of your intent to seek his removal as defense counsel in the State of Utah v. Wade Maughan. Your expressed desire to seek Mr. Mauro's removal has apparently been prompted by recent reports from Det. Mark Burbridge of the Spokane Police Department. Our office represents both Mr. Mauro and Mr. Cilwick on all matters relating to the interview of witnesses in Spokane, Washington. Accordingly, in my capacity as Mr. Mauro's and Mr. Cilwick's attorney, please consider this letter my formal request for immediate production of all reports in your possession relating to Mr. Mauro, Mr. Cilwick and their interaction with witnesses in Mr. Maughan's case.

As you evaluate your options, please consider the following:

Det. Burbridge's decision to arrest my clients prompted an extensive and exhaustive investigation of the facts and circumstances that preceded their incarceration. As part of that effort, investigators have interviewed every witness present at the time that Mr. Mauro and Mr. Cilwick met with Ms. Rina. The reported contents of Det. Burbridge's most recent reports regarding Ms. Rina's account of the initial interview with Mr. Mauro and Mr. Cilwick do not in any way comport with what Ms. Rina and the others present have related to investigators about the meeting. In short, every witness has denied Mr. Mauro and Mr. Cilwick identified themselves as "police officers" or as members of law enforcement. All persons, including Ms. Rina, were clear that Mr. Mauro was a lawyer acting on behalf of Mr. Maughan and that Mr. Cilwick was a member of Mr. Maughan's defense team; neither Ms. Rina nor any other person present recall Mr. Mauro or Mr. Cilwick ordering or admonishing them not to speak to or cooperate with

Mr. H. Thomas Stevenson
Mr. Brad C. Smith
Deputy Box Elder County Attorneys
December 27, 2005
Page 2

members of law enforcement. Ms. Rina and the other witnesses present flat out deny that Mr. Mauro or Mr. Cilwick ordered them not to cooperate. While Det. Burbridge continues to report that my clients led witnesses to believe that they were members of law enforcement, one inescapable fact remains: Det. Burbridge identified Mr. Mauro, and thereafter telephoned him, by way of a business card Mr. Mauro left with Ms. Rina. Interestingly, that card identifies Mr. Mauro as a lawyer, not a cop.

Ms. Rina's shortcomings as a witness are reportedly well known to authorities in the Spokane area. Apparently, one year ago, Ms. Rina was an essential witness for the prosecution in a child homicide case in Spokane. Our interviews with those familiar with the case reveal that Ms. Rina had limitations as a witness related to her memory. While Ms. Rina has consistently reported to our investigators that there was no wrongdoing on the part of Mr. Mauro and Mr. Cilwick, I cannot help but wonder, given the marked discrepancies reported by Det. Burbridge, whether her faulty memory is once again at play.

Any effort by your office to remove Mr. Mauro as counsel will necessarily involve testimony from Ms. Rina and the other witnesses present. Without exception, these witnesses have denied that there was wrongdoing of the type complained of by Det. Burbridge on the part of Mr. Mauro and Mr. Cilwick. The marked discrepancies between Burbridge's account and those of our investigators cause me to question many things, not the least of which is the credibility of the very witnesses that you will need to make your case for removal.

Please understand that, to date, Det. Burbridge's actions have substantially interfered with Mr. Mauro's and Mr. Williams' efforts to represent Mr. Maughan. It is my sincere desire before additional action is taken that due consideration be given to the issues identified above and the significant ramifications to the constitutional rights of my clients and Mr. Maughan.

Thank you for considering this letter. Please contact me with whatever questions or concerns you may have. I look forward to further dialogue with your office on these matters.

Sincerely,


Mark R. Moffat

Addendum H

Scott C. Williams, L.L.C.
Attorney at Law
43 East 400 South
Salt Lake City, UT 84111
Telephone: (801) 220-0700 Facsimile: (801) 364-3232

December 15, 2005

H. Thomas Stevenson
Deputy County Attorney
Box Elder County Attorney's Office
01 South Main Street
Brigham City, UT 84302

Re: *State of Utah v. Wade Maughan*
Case No. 051100355

Dear Tom;

An update on a few matters:

I received the police reports that you sent, and am happy to see that they support the proposition that allegations that criminal or improper conduct on the part of Rich and Ted are unsupported and unfounded. (I understand the statement by Randy Wagar has been subsequently explained as "his misunderstanding.")

I am very concerned about the status of the contract in this case. In your letter to the Board last week you seemed to indicate that your office and/or Box Elder County intend to hold up the process of getting the contract executed. My contacts with the Board suggest that this would be inappropriate. (In the letter that you wrote to the Board, you reference paragraph 1.E. of the contract. If it is the same as other contracts which we have signed, paragraph 1.E. makes it incumbent on the "Defenders" to inform the "Board" of any possible conflicts, and makes no reference to the prosecution.) The defense team has incurred significant fees and costs associated with this case. I ask you to please expedite the contract process so that we can work with confidence.

As to the issue of conversion of discovery to electronic media: the firestorm related to the events in Spokane have wholly occupied our time. Additionally, without an executed contract related to representation in this case, we will not pursue cooperative endeavors which may result in costs for which we are responsible. For these two reasons there is presently no continued effort to arrange for electronic conversion of discovery. Thus, we would appreciate all discovery that should be provided pursuant to Rule 16 at the earliest possibility, especially that which may pertain to the events and circumstances of the Spokane incident. (As per your most recent letter, we expect that there must be police reports from the Box Elder Sheriff's Office related to the execution of the search warrant which led to statements by Mr. Maughan which triggered the

contact with Spokane police, as well as police reports regarding those contacts and follow-up contacts.)

Thank you for your consideration of these matters at your earliest convenience. I look forward to our continued interaction in relation to this case.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott Williams', with a long horizontal flourish extending to the right.

Scott C. Williams
Attorney for Wade Maughan

Addendum I

RICHARD P. MAURO (5402)
43 East 400 South
Salt Lake City, Utah 84111
Telephone: (801) 363-9500
Lawyer for Defendant

IN THE FIRST JUDICIAL DISTRICT COURT
IN AND FOR BOX ELDER COUNTY, STATE OF UTAH

STATE OF UTAH,	:	
	:	AFFIDAVIT OF RICHARD P. MAURO
Plaintiff,	:	
v.	:	
WADE MAUGHAN,	:	Case No. 051100355
Defendant.	:	Judge Ben Hadfield

Richard P. Mauro first duly sworn on his oath deposes and says:

1. I am an attorney licensed to practice in the State of Utah. I have been duly licensed since May, 1989. I graduated from the University of Utah College of Law in 1988. After graduation, I clerked at the Utah Court of Appeals from 1989 to 1990. I accepted employment at the Salt Lake Legal Defender Association and worked at the defender office from 1990 to 1997. I also served as an adjunct professor at the University of Utah College of Law teaching trial advocacy from 1994 to 2004. I served as President of the Utah Association of Criminal Defense

Lawyers (UACDL) from 2000 to 2001. I presently serve as co-chair of the UACDL Capital Defense Committee which is a committee within the organization that monitors and reviews pending capital cases, compiles pleadings unique to death penalty cases and makes those documents available to defense lawyers, and coordinates and organizes training materials and seminars to ensure compliance with Utah Rule of Criminal Procedure 8 and the American Bar Association Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases. In October 2005, I was an invited speaker at the UACDL Rule 8 Seminar held at Snowbird, Utah and lectured regarding the ethical considerations related to compliance with the American Bar Association Guidelines for the Appointment and Performance of Counsel in Death penalty Cases;

2. I am currently a Rule 8 qualified lawyer in that I meet the criteria outlined in Utah Rule of Criminal Procedure 8 for the appointment of counsel in indigent capital cases. I serve on the Utah Indigent Defense Trust Funds Board, which is a Board comprised of court representatives, county commissioners, division of finance personnel, prosecutors and defense lawyers. The Board reviews and administers funding and contract issues in capital cases filed in rural participating counties. I have served on the Board since its inception in 1999. As a Board member, I

participated in the drafting and revising of the contract used in indigent death penalty cases. I have also served on the funding subcommittee reviewing for approval every defense bill and expense related to capital defense representation. As part of my Board duties, I am uniquely familiar with the American Bar Association Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases. Those Guidelines set forth a national standard for the performance of defense counsel in death penalty cases. Compliance with those Guidelines is mandatory and written into the contract meaning that appointed counsel must perform in accordance with Guideline standards;

3. Mr. Maughan's case is the ninth capital case I have been appointed on as counsel. That number consists of eight trial level cases and one post-conviction case. All eight trial level cases were resolved with pleas to sentences less than death. In the post-conviction case, my client is presently on death row and his matter is pending before the Utah Supreme Court. In addition to that, I have served as counsel or co-counsel in at least twelve additional non-capital homicide cases, six of which were tried to a verdict;
4. During the week of November 14, 2005, I received a phone call from Rick Schwermer at the Utah Court Administrators Office, asking if I would be willing to accept the appointment in the case of State of Utah v. Wade Maughan. I

indicated that I would be willing to accept the court appointment in Mr.

Maughan's case;

5. On November 17, 2005, I signed and forwarded to the court an appearance of counsel. Sometime during that week I spoke with Scott Williams, a Rule 8 qualified attorney, about serving as co-counsel. Mr. Williams and I share office space in the same office building, but we are not law partners. Mr. Williams agreed to serve as co-counsel;
6. The court scheduled the initial appearance in Mr. Maughan's case for Monday, December 5, 2005 at 9:00 a.m. before Judge Ben Hadfield in Brigham City, Utah;
7. On that day, Mr. Williams and I met at our office building, located at 43 East 400 South in Salt Lake City sometime around 7:00 a.m. I parked my vehicle, a 2001 gray Toyota Four-Runner, in front of my office, and Mr. Williams and I rode to Brigham City in his vehicle, a dark maroon Audi station wagon;
8. On that day I wore a light gray suit, which I left on a hanger in my office after returning from court. At no time that day did I wear a leather jacket. Nor did I wear dark pants while in Brigham City. In fact, the entire time I was in Brigham City, I was wearing the light gray suit;
9. Mr. Williams and I arrived in Brigham City sometime between 8:30 a.m. and 9:00 a.m. We entered the courthouse and met briefly with our client in the holding

- area. Mr. Cilwick, our investigator, was present with us at that meeting;
10. The court called Mr. Maughan's case at approximately 9:10 a.m. We discussed scheduling matters with the court;
 11. After reviewing my cell phone records, I remember making a call to my office at 9:18 a.m. I believe this call was made after court and lasted approximately four minutes;
 12. After court, Mr. Williams, Mr. Cilwick and I walked across the street to Amy Hugie's office. I spoke briefly to Ms. Hugie about the status of our contract in Mr. Maughan's case. Mr. Williams also spoke to Ms. Hugie about another case, unrelated to Wade Maughan's case;
 13. We spent approximately fifteen minutes at Ms. Hugie's office. We left her office sometime between 9:30 and 9:50 a.m. After leaving Ms. Hugie's office, the three of us walked back to the courthouse where Mr. Williams' and Mr. Cilwick's cars were parked. Mr. Williams and I entered his vehicle and drove directly to Salt Lake City. Mr. Cilwick and I later met up at the Salt Lake City airport at approximately 12:00 noon;
 14. Mr. Williams and I began the drive to Salt Lake City at approximately 9:50 a.m. We made no stops in Brigham City and neither attempted to interview nor interviewed any witnesses in Brigham City;

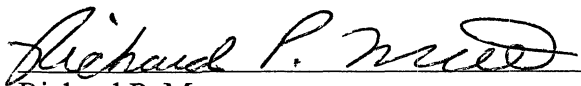
15. I remember receiving a call on my cell phone from my office at 10:29 a.m. We were close to my office in Salt Lake when that conversation took place. I arrived at the office sometime between 10:30 and 10:50 a.m. Upon arriving at the office, I changed out of my suit, hung the suit in my office, and completed several chores before leaving for the airport to fly to Spokane, Washington;
16. Mr. Cilwick and I had a flight to Spokane at 1:10 p.m. on Monday, December 5, 2005. I left my office to drive to the airport sometime between 11:15 a.m. and 11:30 a.m. I arrived at the long term parking lot at 11:45 a.m. That time is shown on the parking receipt I received upon my return from Spokane on Thursday, December 8, 2005;
17. On Friday, December 2, 2005, Mr. Stevenson sent three DVD disks to my office which contained taped interviews of Wade Maughan and Glenn Griffin. The Glenn Griffin DVD and one of the two Wade Maughan DVD interviews did not work. My office contacted Mr. Stevenson's office, who agreed to re-copy all three DVD's. Mr. Stevenson provided copies of the DVD's in court on December 5, 2005;
18. Mr. Williams, Mr. Cilwick and I had no discovery other than the DVD's prior to December 5, 2005. We had no information about possible witnesses in Brigham City and had no names, phone numbers, nor addresses of witnesses. In short, we

were unaware that any potential lay witnesses lived in Brigham City;

19. The first time I learned of any possible witnesses in Brigham City was on Thursday, December 29, 2005 at approximately 4:45 p.m. when a heavy-set gentleman purporting to be Benjamin C. Rasmussen delivered a box of discovery materials to our office. The discovery consisted of police reports, affidavits, pictures, two videotapes and a cassette tape;
20. Cheryl Elzinga's name does not appear in the discovery. Howard Elzinga's name appears in the discovery as a former roommate of Glenn Griffin in the late 1970's. According to the report, Mr. Elzinga was not living in Utah in 1984 when Mr. Perry was killed. There is no connection in any of the reports between Cheryl and/or Howard Elzinga and Wade Maughan;
21. I have never spoken with, called, or attempted in any way to make contact with Cheryl or Howard Elzinga. I neither went to her house, nor tried to call her house either on December 5, 2005 or at any other time. I have never represented myself to be a KUTV news reporter nor any other reporter at any time in my life;
22. I do not own a white SUV nor was I in a white SUV in Box Elder County on December 5, 2005. I did not go to Ms. Elzinga's home, knock on her door, nor attempt to speak with her in any manner;
23. My cell phone records indicate I made or received two calls between the hours of

9:00 a.m. and 11:00 a.m. on December 5, 2005, both of which were either calls made to my office or received from my office.

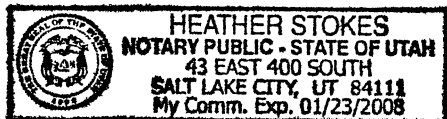
DATED: January 18, 2005.


Richard P. Mauro

Subscribed and sworn to me this 18 day of January, 2006.


NOTARY PUBLIC

My commission expires 1-23-08.



Addendum J

RICHARD P. MAURO (5402)
43 East 400 South
Salt Lake City, UT 84111
Telephone: (801) 363-9500
Facsimile: (801) 364-3232

SCOTT C. WILLIAMS (6687)
43 East 400 South
Salt Lake City, Utah 84111
Telephone: (801) 220-0700
Facsimile: (801) 364-3232

ATTORNEYS FOR DEFENDANT

IN THE FIRST JUDICIAL DISTRICT COURT
IN AND FOR BOX ELDER COUNTY, STATE OF UTAH

STATE OF UTAH,	:	
	:	AFFIDAVIT OF THEODORE CILWICK
Plaintiff,	:	
v.	:	
WADE MAUGHAN,	:	Case No. 051100355
Defendant.	:	Judge Ben Hadfield

Theodore Cilwick first duly sworn on his oath deposes and says:

1. I am a certified licensed investigator in the State of Utah (license number 100268). I have been an investigator for nine years. I am a graduate of Syracuse University with a degree in newspaper journalism. Prior to working as a private

investigator, I worked as a journalist for 21 years. During that time, I wrote articles and was a contributing author to several legal publications including the National Law Journal and the American Bar Association's Journal. I also worked for several different newspapers across the country. I was a court beat reporter in many of those jobs covering and reporting on trials in state and federal court. In the last reporter job I had with the Salt Lake Tribune, my primary assignment was the federal courts.

2. As a licensed investigator I have worked on 18 capital cases, 16 trial level cases and 2 post-convictions cases.
3. Near the end of November, 2005, I was retained by Mr. Mauro and Mr. Williams as an investigator in the case of State of Utah v. Wade Maughan.
4. On Monday, December 5, 2005, I met Mr. Mauro and Mr. Williams at the Box Elder County Courthouse, sometime between 8:30 a.m. and 9:00 a.m. The three of us met briefly with Mr. Maughan in the court holding area.
5. I remember the judge calling the matter shortly after 9:00 a.m. Mr. Maughan's hearing lasted only a few minutes. The parties discussed scheduling matters and efforts at obtaining discovery.
6. It is my custom and practice in all capital cases to obtain a complete copy of the discovery from the assigned attorney as soon as possible in a capital case. Prior to

December 5, 2005, I had neither received nor reviewed any reports, photos, tapes or any other discovery. On Friday, December 2, 2005, I picked up from Mr. Stevenson's office three DVD disks purportedly containing police interviews with Glenn Griffin and Wade Maughan. I was informed on that same day by Mr. Mauro that two of the three DVD's did not work and could not be played.

7. On December 5, 2005, I had no knowledge that Howard or Cheryl Elzinga were potential witnesses in either Wade Maughan's or Glenn Griffin's case. I did not know where Cheryl or Howard Elzinga lived and at no time have I interviewed or made any attempt to interview them. I have never called their home.
8. After court, on December 5, 2005, at approximately 9:20 a.m., Mr. Mauro, Mr. Williams and I walked across the street to the county attorney's office. Mr. Mauro spoke briefly with the county attorney about the contract in Mr. Maughan's case. Mr. Williams spoke to Ms. Hugie about a matter unrelated to Wade Maughan's case.
9. The three of us left the county attorney's office sometime between 9:30 a.m. and 9:50 a.m., walked back to the parking area in front of the courthouse. My vehicle, a 1998 dark blue Honda Civic, was parked next to Mr. Williams' vehicle, a maroon Audi station wagon. I remarked jokingly that Mr. Williams should wash his car as it was covered with salt.

away. This occurred sometime between 9:30 a.m. and 9:50 a.m.

11. I entered my vehicle and drove to the Farmington office of Adult Probation and Parole. I stopped at the AP&P office for approximately five minutes. After leaving the office of AP&P, I drove to the Salt Lake City Airport as I was scheduled to fly with Mr. Mauro to Spokane, Washington to meet with witnesses in Mr. Maughan's case.
12. I arrived at the airport sometime before 12:00 noon, obtained my ticket and went to the gate. I met Mr. Mauro at the gate and we flew together to Spokane, Washington.
13. We interviewed several witnesses in Spokane, Washington. At no time did I tell any witness not to talk to or not to cooperate with police. I also never heard Mr. Mauro tell witnesses not to talk to or not to cooperate with police.

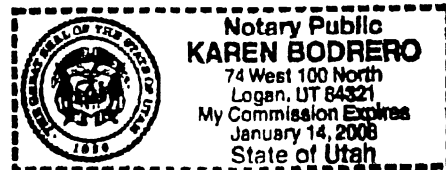
DATED: February 6, 2006.


Ted Cilwick

Subscribed and sworn to me this 6 day of February, 2006.

Karen Bodrero
NOTARY PUBLIC

My commission expires 1-14-08.



Addendum K

CONDENSED TRANSCRIPT

INTERVIEW OF RANDY WAGER

February 10, 2006

Re: State of Utah v. Wade Maughan
Criminal Case No. 051100355
Judge: Ben H. Hadfield

A P P E A R A N C E S

Detective Mark Burbidge
Brad C. Smith
Randy Wager
Scott Hill, Esq.



GARCIA & LOVE

COURT REPORTING AND VIDEOGRAPHY

36 South State Street • Suite 1220 • Salt Lake City, UT 84111 • 801.538.2333 • Fax 801.538.2334

INTERVIEW OF RANDY WAGER

February 10, 2006

Re: State of Utah v. Wade Maughan
Criminal Case No. 051100355
Judge: Ben H. Hadfield

A P P E A R A N C E S

Detective Mark Burbidge
Brad C. Smith
Randy Wager
Scott Hill, Esq.

1

1 that's okay.
2 Okay. Can I ask you how you know Wade Maughan?
3 MR. WAGER: I met him through my brother.
4 MR. SMITH: When did you meet him?
5 MR. WAGER: About six years ago.
6 MR. SMITH: How did you meet him?
7 MR. WAGER: Went over to his house.
8 MR. SMITH: Here in Spokane?
9 MR. WAGER: Yeah.
10 MR. SMITH: Did you form a friendship with him
11 after that?
12 MR. WAGER: Yeah.
13 MR. SMITH: Okay. How close was your
14 friendship with Wade?
15 MR. WAGER: Pretty close. I was there daily.
16 MR. SMITH: At his house daily? Would that be
17 daily for the entire six years you knew him, do you
18 think?
19 MR. WAGER: Yeah, pretty much.
20 MR. SMITH: What kind of stuff did you and Wade
21 do together?
22 MR. WAGER: Sat there and played cribbage,
23 watched football, drank beer.
24 MR. SMITH: Just normal stuff.
25 MR. WAGER: Just normal stuff.

3

February 10, 2006
P R O C E E D I N G S

DETECTIVE BURBIDGE: Okay. We're recording.
Today is February 10th. It's about 2:30 in the
afternoon. I am with Randy Wager and his attorney,
Scott Hill.

Randy, do I have your permission to record this
interview today?

MR. WAGER: Yeah.

DETECTIVE BURBIDGE: Okay. Thank you.

MR. SMITH: Mr. Wager, my name is Brad Smith.

I'm--

MR. WAGER: Wager. It's Wager.

MR. SMITH: Wager? Okay. Thank you.

My name is Brad Smith, and I am a Deputy County
Attorney from Box Elder County, Utah. You understand
that we've charged Wade Maughan with capital homicide
down in Utah. Do you understand that?

MR. WAGER: Yes.

MR. SMITH: Okay. And I understand you've been
interviewed several different times with relation to
this case.

MR. WAGER: Yeah.

MR. SMITH: And we have a couple of follow-up
questions and want to get some background from you, if

2

1 MR. SMITH: Did you ever go on vacation with
2 him or camping trips or...
3 MR. WAGER: I went camping with him once out at
4 Long Lake.
5 MR. SMITH: Is that here outside of Spokane?
6 MR. WAGER: Yeah.
7 MR. SMITH: Any other vacations or trips with
8 him?
9 MR. WAGER: Nope.
10 MR. SMITH: Tell me--if I could get some
11 personal background on you, Mr. Wager. What do you do
12 for a living, sir?
13 MR. WAGER: I'm no SSI.
14 MR. SMITH: And how long have you been on SSI?
15 MR. WAGER: About three years now.
16 MR. SMITH: What did you do before you got SSI?
17 MR. WAGER: Worked in Alaska. Worked for about
18 15 years for a vacuum (inaudible).
19 MR. SMITH: What did you do up in Alaska?
20 MR. WAGER: Worked on a fishing boat and
21 processing plants.
22 MR. SMITH: I see. How long were you up there?
23 MR. WAGER: About three years.
24 MR. SMITH: So about three years ago, you were
25 up there for three years?

4

February 10, 2006

RANDY* WAGER

<p>1 MR. WAGER: No. This has been longer.</p> <p>2 MR. SMITH: Okay. And who do you live with</p> <p>3 now?</p> <p>4 MR. WAGER: Me and my mom take care of my</p> <p>5 brother's children.</p> <p>6 MR. SMITH: I see. And that's here in town?</p> <p>7 MR. WAGER: Yeah.</p> <p>8 MR. SMITH: And so there's--in your house</p> <p>9 there's you and your mom and how many kids?</p> <p>10 MR. WAGER: And three teenage girls.</p> <p>11 MR. SMITH: Three teen--oh, wow. Okay. And</p> <p>12 how long have you been living there with your mom?</p> <p>13 MR. WAGER: I've been living with my mom for</p> <p>14 about three years.</p> <p>15 MR. SMITH: And how long have you had the girls</p> <p>16 there with you?</p> <p>17 MR. WAGER: Well, my mom's had the girls since</p> <p>18 they were a year-and-a-half.</p> <p>19 MR. SMITH: Okay. So more than ten years,</p> <p>20 she's had them?</p> <p>21 MR. WAGER: Yeah.</p> <p>22 MR. SMITH: Okay. Before you lived with your</p> <p>23 mom, where did you live?</p> <p>24 MR. WAGER: I lived in Clarkston.</p> <p>25 MR. SMITH: And that's--</p> <p>5</p>	<p>1 MR. WAGER: No.</p> <p>2 MR. SMITH: Are you on any prescription</p> <p>3 medications today?</p> <p>4 MR. WAGER: No.</p> <p>5 MR. SMITH: Do you take--do you have any</p> <p>6 regularly prescribed prescriptions?</p> <p>7 MR. WAGER: Well, my Dilantin.</p> <p>8 MR. SMITH: Okay. And Dilantin is what kind</p> <p>9 of--</p> <p>10 MR. WAGER: For my seizures.</p> <p>11 MR. SMITH: Okay. Tell me--I understand you</p> <p>12 have a condition that causes seizures. Can you tell me</p> <p>13 about that?</p> <p>14 MR. WAGER: Well, I got in a fight at a bar one</p> <p>15 night and--with my ex-wife's boyfriend and walked away</p> <p>16 from the bar and he hit me in the back of the head. And</p> <p>17 ever since then I've had seizures.</p> <p>18 MR. SMITH: Okay. And when did that happen?</p> <p>19 MR. WAGER: About three years ago.</p> <p>20 MR. SMITH: Okay. And since then you've had</p> <p>21 seizures periodically?</p> <p>22 (No audible response.)</p> <p>23 MR. SMITH: Are your seizures presently</p> <p>24 controlled with the Dilantin?</p> <p>25 MR. WAGER: Yeah, unless I get real stressed</p> <p>7</p>
<p>1 MR. WAGER: In Noble's trailer park.</p> <p>2 MR. SMITH: Clarkston's south of here?</p> <p>3 MR. WAGER: Yeah.</p> <p>4 MR. SMITH: It's on the Washington side of the</p> <p>5 border?</p> <p>6 (No audible response.)</p> <p>7 MR. SMITH: And what's the--is there an Idaho</p> <p>8 town on the other--</p> <p>9 MR. WAGER: Yeah.</p> <p>10 MR. SMITH: Lewiston?</p> <p>11 MR. WAGER: Yeah.</p> <p>12 MR. SMITH: Okay. And how long did you live</p> <p>13 there in Clarkston?</p> <p>14 MR. WAGER: About 15 years.</p> <p>15 MR. SMITH: Okay. Did you know Wade when you</p> <p>16 lived down in Clarkston?</p> <p>17 MR. WAGER: No.</p> <p>18 MR. SMITH: Okay. I'm going to ask if--you're</p> <p>19 on SSI. Do you have a disability?</p> <p>20 MR. WAGER: Yeah.</p> <p>21 MR. SMITH: What's your disability?</p> <p>22 MR. WAGER: Slow learning.</p> <p>23 MR. SMITH: Any other disabilities?</p> <p>24 MR. WAGER: I have a bad back.</p> <p>25 MR. SMITH: Okay. Anything else?</p> <p>6</p>	<p>1 out.</p> <p>2 MR. SMITH: Okay. What kind of things stress</p> <p>3 you out and bring on a seizure?</p> <p>4 MR. WAGER: Just stress.</p> <p>5 MR. SMITH: Okay.</p> <p>6 MR. WAGER: I don't know. Just complicated</p> <p>7 stuff.</p> <p>8 MR. SMITH: I see. Okay. Well, if you start</p> <p>9 to feel stressed here today, you be sure to tell</p> <p>10 Mr. Hill or myself and we'll do whatever we can to</p> <p>11 alleviate that. Okay?</p> <p>12 MR. WAGER: Okay.</p> <p>13 MR. SMITH: Okay. When was the last time you</p> <p>14 had a seizure?</p> <p>15 MR. WAGER: It was around December--early part</p> <p>16 of December.</p> <p>17 MR. SMITH: Okay. And was that--we'll come</p> <p>18 back and talk about that, but you haven't had one since</p> <p>19 then?</p> <p>20 MR. WAGER: Nope.</p> <p>21 MR. SMITH: Okay. And before the one you had</p> <p>22 in December of 2005, when was the one--last one you'd</p> <p>23 had before that?</p> <p>24 MR. WAGER: I can't remember.</p> <p>25 MR. SMITH: Okay. Do you have any idea how</p> <p>8</p>

<p>1 often you end up having seizures?</p> <p>2 MR. WAGER: Maybe once every three or four</p> <p>3 months.</p> <p>4 MR. SMITH: Okay. And do you see a doctor who</p> <p>5 takes your blood to test your Dilantin levels regularly?</p> <p>6 MR. WAGER: Yeah. They haven't tested it in a</p> <p>7 while. It's been up where it's supposed to be.</p> <p>8 MR. SMITH: It's been up in the right range?</p> <p>9 Okay.</p> <p>10 MR. WAGER: Yeah. Since December it's been in</p> <p>11 the right range.</p> <p>12 MR. SMITH: Okay.</p> <p>13 MR. WAGER: It was low in December, so...</p> <p>14 MR. SMITH: Your Dilantin was low in December?</p> <p>15 (No audible response.)</p> <p>16 MR. SMITH: Okay. Did they test you when you</p> <p>17 went to the hospital in December?</p> <p>18 MR. WAGER: Yes.</p> <p>19 MR. SMITH: Okay. Were you actually</p> <p>20 hospitalized for your seizure in December of 2005?</p> <p>21 MR. WAGER: No.</p> <p>22 MR. SMITH: Just went to the emergency room?</p> <p>23 MR. WAGER: Yeah.</p> <p>24 MR. SMITH: How long were you there at the ER</p> <p>25 on that occasion?</p> <p style="text-align: right;">9</p>	<p>1 MR. SMITH: Can I ask you: When you have a</p> <p>2 seizure--I understand there are different kinds of</p> <p>3 seizures. There's grand mal kind of seizures, as I</p> <p>4 understand it, where maybe you lose control of your--</p> <p>5 MR. WAGER: I have grand mals.</p> <p>6 MR. SMITH: Is that what you had on that</p> <p>7 occasion?</p> <p>8 (No audible response.)</p> <p>9 MR. SMITH: Okay. Where did you have the</p> <p>10 seizure at?</p> <p>11 MR. WAGER: At home.</p> <p>12 MR. SMITH: At home? How did you get to the</p> <p>13 hospital?</p> <p>14 MR. WAGER: My mom took me.</p> <p>15 MR. SMITH: Your mom took you to the hospital</p> <p>16 on that occasion? You didn't drive yourself?</p> <p>17 MR. WAGER: No.</p> <p>18 MR. SMITH: Okay. Was anyone else at home when</p> <p>19 you had the seizure on that occasion?</p> <p>20 MR. WAGER: The girls, but--I can't remember if</p> <p>21 the attorneys were there or not.</p> <p>22 MR. SMITH: Okay. Had you had visitors that</p> <p>23 day, the attorneys or anyone else?</p> <p>24 MR. WAGER: Well, the last seizure I remember</p> <p>25 having in front of anybody was I had it in front of</p> <p style="text-align: right;">11</p>
<p>1 MR. WAGER: Four or five hours.</p> <p>2 MR. SMITH: Okay. Not--not a whole day, even?</p> <p>3 MR. WAGER: No.</p> <p>4 MR. SMITH: Okay. Did they give you any</p> <p>5 treatment in the emergency room?</p> <p>6 MR. WAGER: Yeah. They gave me Dilantin and--</p> <p>7 UNIDENTIFIED SPEAKER: If I may. Typical</p> <p>8 seizure medication is Valium to stop seizures. Isn't</p> <p>9 that what you said you had? He has a hard time</p> <p>10 remembering Valium.</p> <p>11 MR. SMITH: Okay. So they gave you Dilantin,</p> <p>12 they gave you some Valium?</p> <p>13 (No audible response.)</p> <p>14 MR. SMITH: Okay. Did they give you anything</p> <p>15 else that you recall?</p> <p>16 MR. WAGER: Not that I can recall.</p> <p>17 MR. SMITH: Okay.</p> <p>18 MR. WAGER: Probably did give me pain</p> <p>19 medication, because I had a really bad headache after I</p> <p>20 had the seizure.</p> <p>21 MR. SMITH: That's pretty common, isn't it--</p> <p>22 MR. WAGER: Yeah.</p> <p>23 MR. SMITH: --to have a bad headache when you</p> <p>24 come out of the seizure?</p> <p>25 MR. WAGER: Yeah.</p> <p style="text-align: right;">10</p>	<p>1 Charlie--I can't think of his last name--and another</p> <p>2 guy.</p> <p>3 MR. SMITH: But that wasn't the December 2005</p> <p>4 seizure, was it?</p> <p>5 MR. WAGER: I can't remember. I've got short-</p> <p>6 term memory.</p> <p>7 MR. SMITH: Okay. Fair enough.</p> <p>8 MR. WAGER: I can't remember very well.</p> <p>9 MR. SMITH: Okay.</p> <p>10 MR. WAGER: Especially when it comes to having</p> <p>11 seizures, I don't remember going into the seizure, I</p> <p>12 don't remember coming out of the seizure.</p> <p>13 MR. SMITH: As I understand grand mal seizures,</p> <p>14 sometimes you can injure yourself pretty severely,</p> <p>15 because either--maybe you bite your tongue or if you're</p> <p>16 flailing around, you can break bones or injure yourself.</p> <p>17 Did you have any of those kind of injuries in December?</p> <p>18 MR. WAGER: Yeah. No.</p> <p>19 MR. SMITH: Not in--</p> <p>20 MR. WAGER: I've broke my shoulder from having</p> <p>21 seizures before.</p> <p>22 MR. SMITH: Okay. But in December of '05, did</p> <p>23 you have any physical injuries from your seizure?</p> <p>24 MR. WAGER: I bit a hole through my tongue.</p> <p>25 MR. SMITH: Okay. You bit your tongue pretty</p> <p style="text-align: right;">12</p>

<p>1 bad? Did you have to have it stitched up or anything?</p> <p>2 MR. WAGER: No. They said it wasn't bad enough</p> <p>3 to have to have stitches.</p> <p>4 MR. SMITH: Okay. And who told you that, the</p> <p>5 doctors at the ER?</p> <p>6 MR. WAGER: Yeah.</p> <p>7 MR. SMITH: Okay. Do you recall when Wade got</p> <p>8 arrested here in December of 2005?</p> <p>9 MR. WAGER: I went over to Stubby's to see</p> <p>10 him--her and Wade that day, and she said--</p> <p>11 MR. SMITH: Just so we're clear, Stubby is</p> <p>12 Lorraine Rima?</p> <p>13 MR. WAGER: Yeah. Right.</p> <p>14 MR. SMITH: Okay.</p> <p>15 MR. WAGER: Yeah. I went over there to their</p> <p>16 house and she said that Wade had walked over here to</p> <p>17 talk to some police about a stabbing that had happened</p> <p>18 somewhere here in Spokane, from what I understood, and</p> <p>19 he never came back.</p> <p>20 MR. SMITH: Okay. After you became--did she</p> <p>21 tell you that Wade had been arrested?</p> <p>22 MR. WAGER: He called while I was there.</p> <p>23 MR. SMITH: I see. Who did he speak with?</p> <p>24 MR. WAGER: He talked to--</p> <p>25 MR. SMITH: To Stubby?</p> <p style="text-align: right;">13</p>	<p>1 down.</p> <p>2 MR. SMITH: What did she tell you?</p> <p>3 MR. WAGER: She said that he was being held for</p> <p>4 accessory to murder.</p> <p>5 MR. SMITH: Did she tell you that it was on a</p> <p>6 Utah case?</p> <p>7 MR. WAGER: Yeah.</p> <p>8 MR. SMITH: Okay. Did she tell you anything</p> <p>9 else about what Wade was facing at that point?</p> <p>10 MR. WAGER: Huh-uh.</p> <p>11 MR. SMITH: Okay. After Wade was arrested, did</p> <p>12 there come a time when you met with some attorneys from</p> <p>13 Utah?</p> <p>14 MR. WAGER: Yeah.</p> <p>15 MR. SMITH: Do you recall who you met with?</p> <p>16 MR. WAGER: I can't remember their names now.</p> <p>17 It's been too long.</p> <p>18 MR. SMITH: If you heard their names, would you</p> <p>19 remember them?</p> <p>20 MR. WAGER: Yeah.</p> <p>21 MR. SMITH: Did you meet with a guy named David</p> <p>22 Finlayson?</p> <p>23 MR. WAGER: Is he an attorney or a private--</p> <p>24 MR. SMITH: Mr. Finlayson is, as I understand</p> <p>25 it, an attorney. But I don't know if he ever met with</p> <p style="text-align: right;">15</p>
<p>1 MR. WAGER: --Lorraine.</p> <p>2 MR. SMITH: You can call her what you're</p> <p>3 familiar with--</p> <p>4 MR. WAGER: Okay.</p> <p>5 MR. SMITH: --just so we're clear on who that</p> <p>6 is.</p> <p>7 MR. WAGER: All right. Stubby.</p> <p>8 MR. SMITH: Okay. And then she told you after</p> <p>9 she'd talked with him that he had been arrested?</p> <p>10 MR. WAGER: Yeah.</p> <p>11 MR. SMITH: Did she tell you what he had been</p> <p>12 arrested for?</p> <p>13 MR. WAGER: Well, I could pretty much tell when</p> <p>14 she started crying that it was something serious.</p> <p>15 MR. SMITH: Did she say--did she tell you that</p> <p>16 it had anything to do with Utah or did you still think</p> <p>17 it was something that happened here in Spokane?</p> <p>18 MR. WAGER: She said it was something that</p> <p>19 happened in Utah.</p> <p>20 MR. SMITH: Did she tell you what the charge</p> <p>21 was against him?</p> <p>22 MR. WAGER: Not right off.</p> <p>23 MR. SMITH: Did she at any point during that</p> <p>24 day tell you what the charge was?</p> <p>25 MR. WAGER: Yeah, she did, after she calmed</p> <p style="text-align: right;">14</p>	<p>1 you or not, I'm just wondering if you know his name.</p> <p>2 MR. WAGER: Okay. I don't recognize that name.</p> <p>3 MR. SMITH: What about a Scott Williams?</p> <p>4 MR. WAGER: Scott Williams.</p> <p>5 MR. SMITH: You met with Scott Williams at some</p> <p>6 point?</p> <p>7 MR. WAGER: Yeah.</p> <p>8 MR. SMITH: What about--</p> <p>9 MR. WAGER: I think they're the ones that came</p> <p>10 to Lorraine's house.</p> <p>11 MR. SMITH: Okay. What about a Richard Morrow?</p> <p>12 MR. WAGER: Maybe that's him, Richard Morrow.</p> <p>13 MR. SMITH: Okay. How about a Ted Silwick?</p> <p>14 MR. WAGER: I'm not too good with names.</p> <p>15 MR. SMITH: Okay. Fair enough. But you think</p> <p>16 Morrow--of the names I've listed, is Morrow the most</p> <p>17 likely one?</p> <p>18 MR. WAGER: Yeah. I know there was a Richard</p> <p>19 or Rick or something.</p> <p>20 MR. SMITH: Okay. So you remember the first</p> <p>21 name more than the last name?</p> <p>22 MR. WAGER: Yeah.</p> <p>23 MR. SMITH: Okay. The--I want to focus for a</p> <p>24 minute on the first meeting you had with those</p> <p>25 attorneys, whoever they were that came up from Utah.</p> <p style="text-align: right;">16</p>

1 Okay? Where was that meeting at?
 2 MR. WAGER: At Lorraine's house.
 3 MR. SMITH: And who all was there?
 4 MR. WAGER: Me and Lorraine, Lorraine's son.
 5 MR. WAGER: What's Lorraine's son's name?
 6 MR. WAGER: Waylon.
 7 MR. SMITH: Waylon. Do you know what his last
 8 name is?
 9 MR. WAGER: Azure.
 10 MR. SMITH: Waylon Azure? Okay. So you,
 11 Lorraine, Waylon?
 12 MR. WAGER: Sarah, my mom.
 13 MR. SMITH: Who's Sarah?
 14 MR. WAGER: Waylon's girlfriend.
 15 MR. SMITH: Okay. So your mom, Sarah--
 16 MR. WAGER: Yeah.
 17 MR. SMITH: --who else?
 18 MR. WAGER: That's it.
 19 MR. SMITH: Okay. So there was--let me make
 20 sure I got the list again. Lorraine, Waylon, Sarah, you
 21 and your mom.
 22 MR. WAGER: Right.
 23 MR. SMITH: And then how many attorneys or
 24 other people came to visit you all there?
 25 MR. WAGER: Just two.

17

1 MR. SMITH: Two people? What--
 2 MR. WAGER: A private detective and--I think
 3 that's what he was, a private detective--and one of
 4 Wade's attorneys.
 5 MR. SMITH: Okay. And, again, I'm going to ask
 6 you, do you recall what their names were?
 7 MR. WAGER: No.
 8 MR. SMITH: Okay. Do you think that's the time
 9 when you met the attorney whose first name was Rick or
 10 Richard?
 11 MR. WAGER: Yeah.
 12 MR. SMITH: Okay. What did they talk about
 13 with you?
 14 MR. WAGER: They just talked about what Wade
 15 was like. About the normal questions you guys are
 16 asking.
 17 MR. SMITH: Okay. Did they explain to you what
 18 charges Wade was facing?
 19 MR. WAGER: Yeah.
 20 MR. SMITH: What did they tell you?
 21 MR. WAGER: They told us that he was being
 22 charged with capital murder.
 23 MR. SMITH: Do you know what capital murder
 24 means?
 25 MR. WAGER: No, not really.

18

1 MR. SMITH: Okay. Did they tell you that he
 2 was potentially facing the death penalty down in Utah?
 3 MR. WAGER: No, they didn't.
 4 MR. SMITH: Okay. Did they explain anything
 5 about what a capital murder charge was?
 6 MR. WAGER: No.
 7 MR. SMITH: Okay. Did you understand that Wade
 8 was potentially facing the death penalty?
 9 MR. WAGER: Most people that are in a case like
 10 that usually do, don't they? It's always that.
 11 MR. SMITH: Is that your understanding?
 12 MR. WAGER: Yeah.
 13 MR. SMITH: Okay. Fair enough. What else did
 14 they talk with you all about?
 15 MR. WAGER: Just what kind of things we did
 16 and--
 17 MR. SMITH: What kind of friendship you had
 18 with him?
 19 MR. WAGER: Yeah.
 20 MR. SMITH: Okay. Did they tell you anything
 21 else?
 22 MR. WAGER: No.
 23 MR. SMITH: Did they tell you specifically what
 24 they were doing, that they were--the guy that said he
 25 was an investigator, what did he tell you about that?

19

1 MR. WAGER: He just said that he was trying to
 2 help Wade, and so did the other guy.
 3 MR. SMITH: Okay. Did the other guy tell you
 4 he was Wade's attorney?
 5 MR. WAGER: Yeah.
 6 MR. SMITH: Okay.
 7 MR. WAGER: He was one of Wade's attorneys.
 8 MR. SMITH: Okay. Excuse me. Did they tell
 9 you anything else on that occasion?
 10 MR. WAGER: They said just don't discuss the
 11 case with anybody.
 12 MR. SMITH: Okay. Is that the--who said that,
 13 the attorney or the other guy?
 14 MR. WAGER: Both of them.
 15 MR. SMITH: Okay. So they each said, "Don't
 16 discuss the case with anybody"?
 17 MR. WAGER: Right.
 18 MR. SMITH: Were those the exact words they
 19 used?
 20 MR. WAGER: Yeah.
 21 MR. SMITH: Okay. And each of them said it
 22 once, or did they say it more than once?
 23 MR. WAGER: Well, they kind of just agreed with
 24 each other, you know. I mean, they both didn't say it,
 25 they said, "Just don't discuss the case with anybody,"

20

<p>1 so...</p> <p>2 MR. SMITH: Okay. Did they say anything else?</p> <p>3 MR. WAGER: I can't remember.</p> <p>4 MR. SMITH: Did they tell you that the police</p> <p>5 would be getting in contact with you?</p> <p>6 MR. WAGER: No, they didn't tell me that the</p> <p>7 police would be getting in contact with me at all.</p> <p>8 MR. SMITH: Did they tell you that you could</p> <p>9 expect to have anyone else come visit you about this</p> <p>10 matter?</p> <p>11 MR. WAGER: Yeah, they said that we could</p> <p>12 expect other attorneys and stuff to contact us on this.</p> <p>13 MR. SMITH: Did they explain that to you at the</p> <p>14 same time they were telling you to not discuss the case</p> <p>15 with anyone? Was that before or after or what was the</p> <p>16 order, if you remember?</p> <p>17 MR. WAGER: I can't remember.</p> <p>18 MR. SMITH: Okay.</p> <p>19 MR. WAGER: Like I said, I--</p> <p>20 MR. SMITH: Were those--when they told you that</p> <p>21 other people would be coming to visit with you, was that</p> <p>22 in the same part of the conversation where they told you</p> <p>23 not to discuss the case with anyone?</p> <p>24 MR. WAGER: Yeah.</p> <p>25 MR. SMITH: Okay. You just don't recall which</p> <p style="text-align: right;">21</p>	<p>1 living room, watching TV.</p> <p>2 MR. SMITH: Where were you all?</p> <p>3 MR. WAGER: We were in the dining room.</p> <p>4 MR. SMITH: Okay. And can you describe the</p> <p>5 house for me? I've never been there, so...</p> <p>6 MR. WAGER: Well, the living room's here and</p> <p>7 the dining room's over here.</p> <p>8 MR. SMITH: So--</p> <p>9 MR. WAGER: We were in the back part of the</p> <p>10 dining room.</p> <p>11 MR. SMITH: --the two rooms are right next to</p> <p>12 each other?</p> <p>13 MR. WAGER: Yeah.</p> <p>14 MR. SMITH: Is there a door in between the two?</p> <p>15 MR. WAGER: No.</p> <p>16 MR. SMITH: Is it just an open passageway?</p> <p>17 MR. WAGER: Yeah.</p> <p>18 MR. SMITH: I see. About how far, would you</p> <p>19 say, where you were in the dining room was from where</p> <p>20 the other folks were in the living room?</p> <p>21 MR. WAGER: Oh, probably 15, 20 feet.</p> <p>22 MR. SMITH: Okay. Were they close enough that</p> <p>23 they could have overheard you, the folks in the living</p> <p>24 room?</p> <p>25 MR. WAGER: I don't think they were even paying</p> <p style="text-align: right;">23</p>
<p>1 came first and which came--</p> <p>2 MR. WAGER: Right.</p> <p>3 MR. SMITH: --second? Okay. Fair enough.</p> <p>4 About how long did that--that meeting where--</p> <p>5 the five of you and the two guys from Utah, how long did</p> <p>6 that last?</p> <p>7 MR. WAGER: It wasn't the five of us, it was</p> <p>8 just the two guys and me and Lorraine.</p> <p>9 MR. SMITH: Oh, I'm sorry, I misunderstood. I</p> <p>10 thought you told me that--</p> <p>11 MR. WAGER: No.</p> <p>12 MR. SMITH: --your mom--</p> <p>13 MR. WAGER: Waylon and them--you just asked who</p> <p>14 was there.</p> <p>15 MR. SMITH: Oh, okay. Well, then tell me--</p> <p>16 okay, then let's back up. That's--I appreciate you</p> <p>17 clarifying that.</p> <p>18 So the five of you were there at the house when</p> <p>19 the two guys came. Who was involved in the conversation</p> <p>20 with them?</p> <p>21 MR. WAGER: Me and Lorraine.</p> <p>22 MR. SMITH: Okay. So just you and Lorraine and</p> <p>23 the--Lorraine's son and his girlfriend and your mom,</p> <p>24 where did they go?</p> <p>25 MR. WAGER: They were just sitting in the</p> <p style="text-align: right;">22</p>	<p>1 attention.</p> <p>2 MR. SMITH: What were they doing?</p> <p>3 MR. WAGER: Watching TV.</p> <p>4 MR. SMITH: Do you recall what time of day it</p> <p>5 was that--</p> <p>6 MR. WAGER: It was at night.</p> <p>7 MR. SMITH: So when you say "night," like 8:00</p> <p>8 in the night or midnight or...</p> <p>9 MR. WAGER: No, it was earlier than that.</p> <p>10 About 7:00.</p> <p>11 MR. SMITH: Okay. Do you recall what day it</p> <p>12 was that this meeting occurred?</p> <p>13 MR. WAGER: No.</p> <p>14 MR. SMITH: Do you recall what day of the week</p> <p>15 it was?</p> <p>16 (No audible response.)</p> <p>17 MR. SMITH: Do you remember what the folks in</p> <p>18 the front room were watching on TV?</p> <p>19 MR. WAGER: Nope.</p> <p>20 MR. SMITH: Okay. After the attorneys left,</p> <p>21 what did you do?</p> <p>22 MR. WAGER: Oh, we sat there for a while and</p> <p>23 then we went home.</p> <p>24 MR. SMITH: Okay. Did you discuss what the</p> <p>25 attorneys had said?</p> <p style="text-align: right;">24</p>

<p>MR. WAGER: No.</p> <p>MR. SMITH: Okay. When you say you "just sat there," did you go back in the living room with the other three, you and Lorraine?</p> <p>MR. WAGER: Yeah.</p> <p>MR. SMITH: Okay. Did you have any conversation at all about what you'd discussed with the attorneys?</p> <p>MR. WAGER: No.</p> <p>MR. SMITH: Did you discuss Wade's situation at all?</p> <p>MR. WAGER: Well, we always discuss Wade's situation, me and Stubby do.</p> <p>MR. SMITH: Okay. And did you that night?</p> <p>MR. WAGER: No, because she was pretty upset, so...</p> <p>MR. SMITH: Okay.</p> <p>MR. WAGER: (Inaudible.)</p> <p>MR. SMITH: And do you know how long Stubby and Wade--as I understand it, before his arrest, Stubby and Wade lived together. Is that correct?</p> <p>MR. WAGER: Yeah.</p> <p>MR. SMITH: Do you know how long they had lived together?</p> <p>MR. WAGER: About 17 years.</p>	<p>1 (No audible response.)</p> <p>2 MR. SMITH: Were you expecting them?</p> <p>3 MR. WAGER: No.</p> <p>4 MR. SMITH: Had they called ahead or anything?</p> <p>5 MR. WAGER: He left a note on my door.</p> <p>6 MR. SMITH: "He" being who?</p> <p>7 MR. WAGER: Mark Burbidge.</p> <p>8 MR. SMITH: Okay. And what did the note say?</p> <p>9 MR. WAGER: It just said his name and his phone</p> <p>10 number and how I could contact him.</p> <p>11 MR. SMITH: Did it identify him as a police</p> <p>12 officer?</p> <p>13 MR. WAGER: I can't recall.</p> <p>14 MR. SMITH: Okay. Do you still have the note?</p> <p>15 MR. WAGER: No.</p> <p>16 MR. SMITH: Okay. So he left a note and what</p> <p>17 did you do when you had the note?</p> <p>18 MR. WAGER: I called the number.</p> <p>19 MR. SMITH: And did he set up a time to come</p> <p>20 visit you?</p> <p>21 MR. WAGER: I can't remember whether we set a</p> <p>22 time or not.</p> <p>23 MR. SMITH: Okay.</p> <p>24 MR. WAGER: I'm not really sure about that.</p> <p>25 MR. SMITH: Let's go forward, then, to when he</p>
<p>MR. SMITH: Okay. So they were close, like a married couple almost?</p> <p>(No audible response.)</p> <p>MR. SMITH: Okay. After you had this meeting with the attorneys from Utah, when was the next time you met with any attorneys or investigators about Wade's case, do you recall?</p> <p>MR. WAGER: In December.</p> <p>MR. SMITH: Okay. Was it like a day later? A week later?</p> <p>MR. WAGER: Like I said, I can't remember.</p> <p>MR. SMITH: Okay. Do you recall--you can't remember when you met with anybody; is that what you meant?</p> <p>MR. WAGER: Right.</p> <p>MR. SMITH: Okay. Do you recall what the next meeting was, even if you can't remember when it was? Did you meet with Detective Burbidge or other people from Utah, or do you recall?</p> <p>MR. WAGER: I think it was Burbidge and another cop.</p> <p>MR. SMITH: Okay. And where was that meeting at?</p> <p>MR. WAGER: My house.</p> <p>MR. SMITH: So they came over to your house?</p>	<p>1 showed up. Who was it exactly that showed up?</p> <p>2 MR. WAGER: Mark Burbidge and another officer.</p> <p>3 I can't remember his name.</p> <p>4 MR. SMITH: Would you remember it if you heard</p> <p>5 it?</p> <p>6 MR. WAGER: I doubt it.</p> <p>7 MR. SMITH: If I said Madsen or Peterson?</p> <p>8 MR. WAGER: Yeah, Madsen. I think that was it.</p> <p>9 MR. SMITH: Okay. And you see Detective</p> <p>10 Burbidge here with us today?</p> <p>11 MR. WAGER: Yeah.</p> <p>12 MR. SMITH: Had you known Burbidge before that?</p> <p>13 MR. WAGER: Nope.</p> <p>14 MR. SMITH: You'd never met him before?</p> <p>15 (No audible response.)</p> <p>16 MR. SMITH: Okay. So they showed up at your</p> <p>17 house. What did he--what did you discuss with him?</p> <p>18 Well, let me interrupt you for a minute.</p> <p>19 When Detective Burbidge and the other police</p> <p>20 officer came to your house, who was there?</p> <p>21 MR. WAGER: Me and my mom.</p> <p>22 MR. SMITH: Anyone else?</p> <p>23 MR. WAGER: No.</p> <p>24 MR. SMITH: Okay. Did your mom sit in on the</p> <p>25 meeting with you and the two police officers?</p>

<p>1 MR. WAGER: Yeah.</p> <p>2 MR. SMITH: Okay. So it was the four of you in</p> <p>3 the conversation?</p> <p>4 (No audible response.)</p> <p>5 MR. SMITH: Tell me what you discussed with</p> <p>6 Detective Burbidge and the other officer.</p> <p>7 MR. WAGER: Oh, they just asked me about Wade.</p> <p>8 And I started answering questions and they told me that</p> <p>9 I was basically lying, so...</p> <p>10 MR. SMITH: What did they say?</p> <p>11 MR. WAGER: Well, he just said he didn't think</p> <p>12 I was telling him the truth.</p> <p>13 MR. SMITH: What is it you told him when he</p> <p>14 said he didn't think you were telling him the truth?</p> <p>15 MR. WAGER: Things about--in the jail, what</p> <p>16 Wade was telling me.</p> <p>17 MR. SMITH: Okay. Had you--by the time he came</p> <p>18 to your house, meaning the two detectives, had you</p> <p>19 already been to visit Wade at the jail?</p> <p>20 MR. WAGER: Yeah.</p> <p>21 MR. SMITH: Okay.</p> <p>22 MR. WAGER: We went to visit him about--well,</p> <p>23 the first visiting day that we could after he was</p> <p>24 arrested.</p> <p>25 MR. SMITH: Okay. We'll come back and talk</p> <p style="text-align: right;">29</p>	<p>1 you say they were "toned" about it, what does that--I</p> <p>2 don't know what that means.</p> <p>3 MR. WAGER: Well, just attitude change. You</p> <p>4 know, how you talk to somebody if you go to discuss</p> <p>5 something differently, the tone of your voice changes,</p> <p>6 you know.</p> <p>7 MR. SMITH: Okay. So you noticed that their</p> <p>8 voice changed a little bit?</p> <p>9 (No audible response.)</p> <p>10 MR. SMITH: Okay. Were they--were they angry?</p> <p>11 MR. WAGER: No, didn't seem angry.</p> <p>12 MR. SMITH: Were they aggressive with you?</p> <p>13 MR. WAGER: They just--I don't know. I felt</p> <p>14 like they were trying to get--that they were trying to</p> <p>15 get me to--trick me into saying something that I didn't</p> <p>16 know.</p> <p>17 MR. SMITH: Okay. But they--were they being</p> <p>18 real pushy with you or bullying?</p> <p>19 MR. WAGER: A little pushy. I wouldn't say</p> <p>20 bullying.</p> <p>21 MR. SMITH: Okay. You wouldn't say bullying?</p> <p>22 MR. WAGER: No.</p> <p>23 MR. SMITH: Okay. What else did they talk</p> <p>24 about with you?</p> <p>25 MR. WAGER: Just things about Wade.</p> <p style="text-align: right;">31</p>
<p>1 about that conversation in a moment. But you're just</p> <p>2 saying that Burbidge or the other officer accused you of</p> <p>3 lying to them about what you had discussed--what you</p> <p>4 were telling them about the discussions at the jail?</p> <p>5 MR. WAGER: Yeah. They just said that I--they</p> <p>6 didn't think I was being completely honest with them.</p> <p>7 MR. SMITH: Did they tell you why they thought?</p> <p>8 MR. WAGER: I can't remember.</p> <p>9 MR. SMITH: Okay. Did they accuse you of lying</p> <p>10 about anything else?</p> <p>11 MR. WAGER: Not that I can remember. About</p> <p>12 what?</p> <p>13 MR. SMITH: When they told you they didn't</p> <p>14 think you were being completely honest--excuse me--what</p> <p>15 was their demeanor?</p> <p>16 MR. WAGER: I don't know. Like they wanted me</p> <p>17 to spit out something more that I didn't know, because--</p> <p>18 MR. SMITH: Were they--</p> <p>19 MR. WAGER: --I didn't know.</p> <p>20 MR. SMITH: I see. Okay. Were they real angry</p> <p>21 and upset and hollering and screaming?</p> <p>22 MR. WAGER: No. They were kind of toned about</p> <p>23 it, but I didn't like being called a liar in my own</p> <p>24 house.</p> <p>25 MR. SMITH: Sure. That's understandable. When</p> <p style="text-align: right;">30</p>	<p>1 MR. SMITH: Okay. Did they--</p> <p>2 MR. WAGER: What was discussed.</p> <p>3 MR. SMITH: What was discussed with Wade?</p> <p>4 MR. WAGER: Yeah.</p> <p>5 MR. SMITH: Okay. Did they discuss with you</p> <p>6 the conversation you had with the attorneys previously?</p> <p>7 MR. WAGER: Yeah.</p> <p>8 MR. SMITH: What did they discuss with you</p> <p>9 about that?</p> <p>10 MR. WAGER: They come over to question again</p> <p>11 and I told them that we weren't supposed to talk to</p> <p>12 anybody.</p> <p>13 MR. SMITH: Okay. So what--let me make sure I</p> <p>14 understand what you just told me. You said they came</p> <p>15 over to question you again. Was this the first time</p> <p>16 Burbidge and the police officer had come to your house?</p> <p>17 MR. WAGER: The second time.</p> <p>18 MR. SMITH: Okay. So let's stick with this</p> <p>19 first conversation for just a minute. Okay? Did they</p> <p>20 discuss on that occasion what you had talked about with</p> <p>21 the attorneys previously?</p> <p>22 MR. WAGER: Yeah. I think we just told them</p> <p>23 that--what we had been telling everybody all along. I</p> <p>24 mean--</p> <p>25 MR. SMITH: Which was what?</p> <p style="text-align: right;">32</p>

MR. WAGER: About Wade's life and--
 MR. SMITH: Did you tell them you'd been told not to talk to anybody about the case?
 MR. WAGER: Yeah.
 MR. SMITH: What was their reaction to that?
 MR. WAGER: Well, they said that they were going to go and arrest the attorneys for--I can't remember what it was. Something involving the case, saying that we couldn't talk to them. But my understanding was that I wasn't supposed to talk to anybody.
 MR. SMITH: Okay.
 MR. WAGER: I thought that meant the police. That was my own judgment of what was going on--
 MR. SMITH: Okay.
 MR. WAGER: --that I wasn't supposed to talk to anybody, and that meant the police, too.
 MR. SMITH: I understand what you're saying. I want to be very clear. When you met with the attorneys from Utah, as I understand what you've already told me--and I want you to correct me if I'm wrong, what they told you was, "Don't talk to anybody about the case." Is that correct?
 MR. WAGER: Yeah.
 MR. SMITH: Okay. Did they say anything else

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1 MR. WAGER: Oh, they got pissed off because we
 2 wouldn't talk to them. And they went and they arrested
 3 the attorneys.
 4 MR. SMITH: Okay. How did you become aware
 5 that the attorneys had--had got arrested?
 6 MR. WAGER: Because the police told us that
 7 they were going to go arrest them.
 8 MR. SMITH: Okay. Okay. Can you recall
 9 anything else about this first meeting you had with the
 10 police officers?
 11 MR. WAGER: That's pretty much it.
 12 MR. SMITH: Okay.
 13 MR. WAGER: Just things about what was
 14 discussed in the jail and--
 15 MR. SMITH: Okay. And let's--I want to come
 16 back to that jail conversation, but let's move forward
 17 for a minute. Okay?
 18 After the police officers left, what was your
 19 next encounter with either officers or people from Utah
 20 about this case?
 21 MR. WAGER: Now, explain that again.
 22 MR. SMITH: Okay. As I understand what you've
 23 told me, you had a meeting with the attorney and the
 24 investigator from Utah.
 25 MR. WAGER: Right.

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about who you should or shouldn't talk to?
 MR. WAGER: No.
 MR. SMITH: Okay. So when they said, "Don't talk to anybody," you thought that meant anybody?
 MR. WAGER: Right, anybody.
 MR. SMITH: Okay. And those are the--those are the words that they used, "Don't talk to anybody?"
 MR. WAGER: "Don't discuss this with anybody."
 MR. SMITH: And they told you that--
 MR. WAGER: They told us not to discuss it with anybody over the phone, don't discuss it with Wade.
 MR. SMITH: Don't discuss it with anyone?
 MR. WAGER: Don't discuss it with anybody.
 MR. SMITH: Okay. And so you understood that to mean just what it said?
 MR. WAGER: Everyone.
 MR. SMITH: Okay. I just want to be very clear on that. If they told you something different, we need to know about that.
 MR. WAGER: No, they didn't tell me anything different.
 MR. SMITH: Okay. What were you--skipping back now to the first meeting you had with the officers, when you told them that that's what you'd been told, "Don't talk to anybody," what was the officers' reactions?

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1 MR. SMITH: Then Burbidge and some other
 2 Spokane police officer came to your house and talked to
 3 you.
 4 MR. WAGER: Right.
 5 MR. SMITH: Were there any other meetings with
 6 either attorneys or people from Utah or Spokane officers
 7 after those two meetings?
 8 MR. WAGER: I had another meeting with--just
 9 last week I had a meeting with--
 10 MR. SMITH: Some other attorney from Utah?
 11 MR. WAGER: --some other--
 12 MR. SMITH: Okay.
 13 MR. WAGER: --attorney from Utah.
 14 MR. SMITH: Okay. Not counting that meeting,
 15 back in December, before Christmas, did you have any
 16 other meetings with attorneys from Utah?
 17 MR. WAGER: No.
 18 MR. SMITH: Okay. So they never came back
 19 and--no other--after Morrow and the investigator got
 20 arrested, did anyone come talk to you when they got
 21 arrested, that day or the next couple of days?
 22 MR. WAGER: Yeah. Charlie came and talked to
 23 me.
 24 MR. SMITH: Who's Charlie?
 25 MR. WAGER: He's another attorney here in town.

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<p>1 MR. SMITH: He's an attorney here in town? 2 Charlie--do you know his-- 3 MR. WAGER: I can't remember his last name. 4 MR. SMITH: Do you know his last name, Mark? 5 (No audible response.) 6 MR. SMITH: Okay. So an attorney named Charlie 7 came to talk to you. Was he your attorney? 8 MR. WAGER: No. 9 MR. SMITH: What did Charlie have to say? 10 MR. WAGER: Because I told them that I didn't 11 understand a lot of the questions that were being 12 asked-- 13 MR. SMITH: By whom? 14 MR. WAGER: By anybody. 15 MR. SMITH: Okay. Fair enough. 16 MR. WAGER: The attorneys, the police. I 17 didn't understand the way that I should answer the 18 questions, so he told me that I should get representa- 19 tion to have an attorney present. 20 MR. SMITH: This is what Charlie told you? 21 MR. WAGER: Yeah. He said I should have an 22 attorney present when anybody questions me. 23 MR. SMITH: Okay. Was--when Charlie came to-- 24 did he come to your house to visit you? 25 MR. WAGER: Yeah, he came to my house.</p> <p style="text-align: right;">37</p>	<p>1 worked for a law firm? 2 MR. WAGER: I don't know. 3 MR. SMITH: Okay. Did he tell you who he 4 represented? 5 MR. WAGER: He said he was representing Wade. 6 MR. SMITH: Okay. Did Charlie arrange for an 7 attorney for you? 8 MR. WAGER: No. 9 MR. SMITH: Okay. He just told--he just gave 10 you some advice, that you should have an attorney 11 whenever you're questioned from now on? 12 MR. WAGER: Right. 13 MR. SMITH: Okay. Did you follow that advice? 14 MR. WAGER: Yeah. 15 MR. SMITH: And who did you get? 16 MR. WAGER: Scott Hill. 17 MR. SMITH: Okay. And when did you retain 18 Mr. Hill? 19 MR. WAGER: I think it was just before I left 20 for Salt Lake. 21 MR. HILL: If you don't mind me--I don't have 22 my calendar here. 23 MR. SMITH: That's fair enough. 24 MR. HILL: He made an appointment, came in and 25 seen me--it had to be around maybe the 12th of</p> <p style="text-align: right;">39</p>
<p>1 MR. SMITH: Okay. Who else was present when 2 Charlie visited with you? 3 MR. WAGER: It was just Charlie. 4 MR. SMITH: And you? 5 MR. WAGER: And my mom. 6 MR. SMITH: And your mom. Okay. And did you 7 know Charlie before this? 8 MR. WAGER: No. 9 MR. SMITH: You'd never met him before? 10 (No audible response.) 11 MR. SMITH: Did he tell you who he was? 12 MR. WAGER: Yeah, he told me who he was. 13 MR. SMITH: And what did he tell you? 14 MR. WAGER: He told me that he was an attorney 15 here in Spokane-- 16 MR. SMITH: Did he say-- 17 MR. WAGER: --and that he'd been assigned to 18 this--he was helping out some attorneys in Utah over 19 here, so... 20 MR. SMITH: I see. 21 MR. WAGER: Because they can't be there and 22 here at the same time, so... 23 MR. SMITH: Certainly makes sense. 24 MR. WAGER: That's what he was doing. 25 MR. SMITH: Okay. Did he--do you know if he</p> <p style="text-align: right;">38</p>	<p>1 December-- 2 MR. SMITH: Okay. So-- 3 MR. HILL: --something like that. Sometime 4 around there. 5 MR. SMITH: Is that your recollection also, 6 Mr. Wager? 7 MR. HILL: And I'll confirm the exact dates, if 8 you want. 9 MR. SMITH: Thank you, Mr. Hill. I appreciate 10 that. 11 In any event, it sounds like well before 12 Christmas-- 13 MR. WAGER: Yeah. 14 MR. SMITH: --that you went and saw Mr. Hill. 15 Okay. And did you do that because of Charlie's advice? 16 MR. WAGER: Yeah. 17 MR. SMITH: Okay. 18 MR. WAGER: And for my own protection, you 19 know. 20 MR. SMITH: Did you feel like you needed 21 protection? 22 MR. WAGER: Well, I felt like I was being-- 23 every time they asked me questions, like they were 24 trying to trick me into saying something that shouldn't 25 have been said or--</p> <p style="text-align: right;">40</p>

<p>1 MR. SMITH: Okay.</p> <p>2 MR. WAGER: I don't know, just--</p> <p>3 MR. SMITH: Fair enough. Let me turn to a</p> <p>4 different topic for a minute.</p> <p>5 In some of the papers that we've seen in this</p> <p>6 case, someone has said that you had your seizure in</p> <p>7 December in front of some officers from the Spokane</p> <p>8 Police Department. Is that true? At your house.</p> <p>9 MR. WAGER: No. I had my seizures in front of</p> <p>10 some attorneys.</p> <p>11 MR. SMITH: Do you recall who the attorneys</p> <p>12 were?</p> <p>13 MR. WAGER: Charlie and another attorney was</p> <p>14 there.</p> <p>15 MR. SMITH: Okay. Was this the same visit you</p> <p>16 were telling me about with Charlie and your mom was</p> <p>17 present, also, and there was another attorney present</p> <p>18 with Charlie? Is that correct?</p> <p>19 (No audible response.)</p> <p>20 MR. SMITH: Okay.</p> <p>21 MR. WAGER: Yeah.</p> <p>22 MR. SMITH: Was that other attorney a</p> <p>23 Washington attorney or a Utah attorney?</p> <p>24 MR. WAGER: I think he was a Utah attorney.</p> <p>25 MR. SMITH: Can you describe him for me? Let</p> <p style="text-align: right;">41</p>	<p>1 colors.</p> <p>2 MR. SMITH: Any of those? Okay. Did he</p> <p>3 introduce himself when he came in, tell you what his</p> <p>4 name was?</p> <p>5 MR. WAGER: Actually, I think Charlie</p> <p>6 introduced him.</p> <p>7 MR. SMITH: Okay.</p> <p>8 MR. WAGER: And I can't remember his name.</p> <p>9 MR. SMITH: If I said Williams--Scott Williams,</p> <p>10 does that sound at all familiar?</p> <p>11 MR. WAGER: Might have been it.</p> <p>12 MR. SMITH: Okay. What about--I don't--if you</p> <p>13 don't remember, that's--that's a perfectly good answer,</p> <p>14 "I don't remember."</p> <p>15 How about Dave Finlayson?</p> <p>16 (No audible response.)</p> <p>17 MR. SMITH: Okay. But in any event, you had</p> <p>18 this conversation with these two, Charlie and the other</p> <p>19 attorney and you and your mom?</p> <p>20 UNIDENTIFIED SPEAKER: I want to make sure</p> <p>21 we're talking about the same thing here. Do you</p> <p>22 remember the day you had your seizure? Do you remember</p> <p>23 (inaudible) and then you went down?</p> <p>24 MR. WAGER: Yeah.</p> <p>25 UNIDENTIFIED SPEAKER: Because I wasn't sure</p> <p style="text-align: right;">43</p>
<p>1 me ask you some better questions.</p> <p>2 About how old would you say he was?</p> <p>3 MR. WAGER: Probably my age.</p> <p>4 MR. SMITH: Which is?</p> <p>5 MR. WAGER: Mid-30s, late 30s.</p> <p>6 MR. SMITH: Okay. So 35 to 40?</p> <p>7 (No audible response.)</p> <p>8 MR. SMITH: What build?</p> <p>9 MR. WAGER: Oh, skinny. Smaller than me.</p> <p>10 MR. SMITH: Okay. I'd say skinny and smaller</p> <p>11 than me, but that includes just about everybody.</p> <p>12 How tall was he?</p> <p>13 MR. WAGER: I don't know. I'd say he was</p> <p>14 probably about 5'9".</p> <p>15 MR. SMITH: Okay. What color of hair?</p> <p>16 MR. WAGER: I can't remember what color of</p> <p>17 hair.</p> <p>18 MR. SMITH: Do you recall how he had his hair</p> <p>19 styled? Long? Short?</p> <p>20 MR. WAGER: Short.</p> <p>21 MR. SMITH: Close-cut?</p> <p>22 MR. WAGER: Yeah.</p> <p>23 MR. SMITH: Do you recall if it was blond or</p> <p>24 brown or red?</p> <p>25 MR. WAGER: It could have been any of those</p> <p style="text-align: right;">42</p>	<p>1 about that.</p> <p>2 MR. WAGER: Yeah. I--I--my mom had hollered</p> <p>3 downstairs and said that there was some attorneys there</p> <p>4 to talk to me.</p> <p>5 MR. SMITH: Okay.</p> <p>6 MR. WAGER: So I came up and sat down in the</p> <p>7 chair, lit a cigarette and had a seizure.</p> <p>8 MR. SMITH: Okay. And this was the same time</p> <p>9 they told you to make sure you get an attorney to</p> <p>10 represent yourself?</p> <p>11 (No audible response.)</p> <p>12 MR. SMITH: Okay. Did they tell you anything</p> <p>13 else?</p> <p>14 MR. WAGER: Huh-uh.</p> <p>15 MR. SMITH: Okay. And you went into a seizure</p> <p>16 right in front of them?</p> <p>17 MR. WAGER: Yeah.</p> <p>18 MR. SMITH: Okay. What did they do, do you</p> <p>19 know?</p> <p>20 MR. WAGER: Oh, I guess--Charlie said I scared</p> <p>21 the hell out of them and they took my cigarette out of</p> <p>22 my hand and put it out.</p> <p>23 MR. SMITH: And your--did they help you to the</p> <p>24 car or...</p> <p>25 MR. WAGER: No. I--I was only out for just a</p> <p style="text-align: right;">44</p>

1 few minutes, I guess.
 2 MR. SMITH: Okay. Were they there when you
 3 started coming--
 4 MR. WAGER: It wasn't a real bad, bad seizure,
 5 it was just like a mini mal.
 6 MR. SMITH: A mini mal or a petit mal,
 7 something like that?
 8 MR. WAGER: Yeah, petit mal seizure. It wasn't
 9 one of my real bad ones.
 10 MR. SMITH: I see. Were they there when you
 11 came to?
 12 MR. WAGER: Yeah.
 13 MR. SMITH: Okay. And was--is that when they
 14 said, "You scared us--scared the hell out of us"?
 15 MR. WAGER: Yeah. They--they said, "No way,
 16 I'm not going to ask you any questions today," so...
 17 MR. SMITH: They left?
 18 MR. WAGER: Yeah.
 19 MR. SMITH: Were any police officers there at
 20 that time?
 21 (No audible response.)
 22 MR. SMITH: Okay. After they left, what did
 23 you do? Is that when you went to the hospital?
 24 MR. WAGER: Went to the hospital, yeah. I
 25 wasn't feeling very well.

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1 MR. WAGER: It was the officer that's--that was
 2 with him when I first met him.
 3 MR. SMITH: Okay. So it was the same two that
 4 had come--that--it was Madsen and the officer who was
 5 with Burbidge the first time Burbidge came; is that what
 6 you're saying?
 7 MR. WAGER: Yeah.
 8 MR. SMITH: Okay. So some officer you'd never
 9 met and this officer you'd met with Burbidge?
 10 MR. WAGER: Right.
 11 MR. SMITH: I see. Okay. Did--were they able
 12 to question you there at the hospital?
 13 MR. WAGER: No.
 14 MR. SMITH: Okay.
 15 MR. WAGER: I told them I wasn't going to
 16 answer any questions because I was under--I had Valium
 17 in me, painkiller in me. They'd just pumped me full of
 18 Dilantin. I was just disoriented and I told them--they
 19 wanted me to write out a written statement and I told
 20 them, "No, I'm not going to do that because I'm under
 21 all this medication and I'm not going to sign anything,
 22 I'm not going to say anything."
 23 MR. SMITH: What was their reaction to that?
 24 MR. WAGER: They just said, "Okay," and--
 25 MR. SMITH: Were they--were they angry, pissed

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1 MR. SMITH: Well, that's--that's
 2 understandable.
 3 About what time of day was it you went to the
 4 hospital?
 5 MR. WAGER: Oh, it was probably around noon.
 6 MR. SMITH: Okay. And you figured you were
 7 there for--
 8 MR. WAGER: I mean, I went right after they
 9 left.
 10 MR. SMITH: Okay. And you figured you were at
 11 the hospital for six--five, six hours?
 12 (No audible response.)
 13 MR. SMITH: Okay.
 14 UNIDENTIFIED SPEAKER: We need to switch that?
 15 UNIDENTIFIED SPEAKER: About 20 minutes.
 16 MR. SMITH: Did you have any visitors while you
 17 were at the hospital?
 18 MR. WAGER: Yeah, I had a couple officers come
 19 in there and wanted to question me.
 20 MR. SMITH: Okay. Do you recall who they were?
 21 MR. WAGER: The--Madsen or whatever.
 22 MR. SMITH: Was Burbidge with him?
 23 MR. WAGER: It's the gentleman--no, he wasn't
 24 with them.
 25 MR. SMITH: Okay.

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1 off?
 2 MR. WAGER: Well, I can't really remember.
 3 MR. SMITH: Okay. Fair enough. How did you
 4 get home from the hospital that day?
 5 MR. WAGER: My mom came and got me.
 6 MR. SMITH: Okay. I want to be, again, very
 7 clear about this. The day you had your seizure, you
 8 saw--officers came to see you at the hospital. Did they
 9 come to see you anywhere else other than at the
 10 hospital?
 11 MR. WAGER: No, they came to see me at the
 12 hospital.
 13 MR. SMITH: Okay. And so you had the seizure
 14 in front of Charlie and the Utah attorney?
 15 (No audible response.)
 16 MR. SMITH: Okay. Did they offer to give you
 17 any medical assistance?
 18 MR. WAGER: They didn't really know what to do.
 19 MR. SMITH: Okay. I guess they flunked their
 20 Boy Scout first aid. Okay.
 21 When you--we talked--you mentioned a couple of
 22 times you went to see Wade at the jail. When you
 23 visited Wade in the jail, was it here in Spokane?
 24 MR. WAGER: Yeah.
 25 MR. SMITH: How many times did you go to visit

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<p>1 Wade at the Spokane jail?</p> <p>2 MR. WAGER: Twice.</p> <p>3 MR. SMITH: Two times. Who was--let's talk--</p> <p>4 let's focus for a minute on the first time, okay?</p> <p>5 MR. WAGER: All right.</p> <p>6 MR. SMITH: Who was with you the first time you</p> <p>7 went to see Wade at the jail?</p> <p>8 MR. WAGER: Me, Stubby and Ashley.</p> <p>9 MR. SMITH: Who's Ashley?</p> <p>10 MR. WAGER: My niece.</p> <p>11 MR. SMITH: Okay. And where does Ashley live?</p> <p>12 MR. WAGER: With me.</p> <p>13 MR. SMITH: Okay. So she's one of the three</p> <p>14 girls that's there in your house?</p> <p>15 MR. WAGER: Yeah.</p> <p>16 MR. SMITH: How old is Ashley?</p> <p>17 MR. WAGER: 14.</p> <p>18 MR. SMITH: Did she know Wade before all this</p> <p>19 happened?</p> <p>20 MR. WAGER: Yeah.</p> <p>21 MR. SMITH: Is she the oldest of the three?</p> <p>22 Youngest?</p> <p>23 MR. WAGER: No.</p> <p>24 MR. SMITH: Middle?</p> <p>25 MR. WAGER: Middle.</p> <p style="text-align: right;">49</p>	<p>1 MR. WAGER: He said they showed him pictures of</p> <p>2 a bunch of stuff.</p> <p>3 MR. SMITH: Did he talk to you about being in</p> <p>4 the convenience store either in this first interview or</p> <p>5 the second time you went to see him? Did he ever talk</p> <p>6 to you about some dispute that Wade--pardon me. Strike</p> <p>7 all that, let me start over.</p> <p>8 Did he ever talk to you about a man named Glenn</p> <p>9 Griffin?</p> <p>10 MR. WAGER: Yeah. Yeah. He said he had an</p> <p>11 argument with the clerk over ten bucks.</p> <p>12 MR. SMITH: When you say "he," you mean Wade or</p> <p>13 Glenn.</p> <p>14 MR. WAGER: Glenn.</p> <p>15 MR. SMITH: Okay. Did Wade say he was there to</p> <p>16 see the argument?</p> <p>17 MR. WAGER: Yeah, he said he was there to see</p> <p>18 the argument.</p> <p>19 MR. SMITH: What--did he explain what happened</p> <p>20 in the argument?</p> <p>21 MR. WAGER: No, he didn't really explain why he</p> <p>22 had the argument. He said Glenn hit the guy.</p> <p>23 MR. SMITH: What else did he say?</p> <p>24 MR. WAGER: He said the guy behind the counter</p> <p>25 had brought out a weapon or something.</p> <p style="text-align: right;">51</p>
<p>1 MR. SMITH: Okay. When you went there the</p> <p>2 first time, what did you visit with Wade about?</p> <p>3 MR. WAGER: Well, we just talked about why he</p> <p>4 was in jail.</p> <p>5 MR. SMITH: Did he discuss the Utah case at all</p> <p>6 at that--on that occasion?</p> <p>7 MR. WAGER: Yeah.</p> <p>8 MR. SMITH: What did he tell you about it?</p> <p>9 MR. WAGER: Well, I just told him--I said,</p> <p>10 "What the hell they got you locked up for?" And he</p> <p>11 said, "Well"--he says, "They got me in here for</p> <p>12 accessory to murder."</p> <p>13 MR. SMITH: Did he know what they were talking</p> <p>14 about when they charged him with that? Or did he talk</p> <p>15 to you about it?</p> <p>16 MR. WAGER: No.</p> <p>17 MR. SMITH: Did he explain anything to you</p> <p>18 about what had happened in Utah?</p> <p>19 MR. WAGER: No, he didn't explain anything to</p> <p>20 me about that. He just said that some guy got murdered</p> <p>21 in a convenience store.</p> <p>22 MR. SMITH: Did he say anything else?</p> <p>23 (No audible response.)</p> <p>24 MR. SMITH: Did he say he was there when the</p> <p>25 guy got murdered in the convenience store?</p> <p style="text-align: right;">50</p>	<p>1 MR. SMITH: Did he say what kind of a weapon?</p> <p>2 MR. WAGER: Like a screwdriver.</p> <p>3 MR. SMITH: Okay. What else did he say?</p> <p>4 MR. WAGER: And was taking it after Glenn.</p> <p>5 MR. SMITH: And what else did he say?</p> <p>6 MR. WAGER: And he said he thought Glenn was</p> <p>7 just hitting the guy.</p> <p>8 MR. SMITH: Did he explain anything else?</p> <p>9 MR. WAGER: Just that Glenn beat the guy up.</p> <p>10 MR. SMITH: Did he talk about anything else</p> <p>11 with respect to the guy that was behind the counter?</p> <p>12 MR. WAGER: No, except for it was just over ten</p> <p>13 bucks.</p> <p>14 MR. SMITH: Okay. Did he talk about--anything</p> <p>15 about how they--if they tied the guy up?</p> <p>16 MR. WAGER: No.</p> <p>17 MR. SMITH: Did he mention anything about</p> <p>18 stabbing the guy?</p> <p>19 MR. WAGER: Nope.</p> <p>20 MR. SMITH: Did he mention anything about</p> <p>21 finding some cord or something to tie the guy up with?</p> <p>22 (No audible response.)</p> <p>23 MR. SMITH: Okay. Did Wade explain that he was</p> <p>24 there when this argument over the ten bucks occurred?</p> <p>25 MR. WAGER: Yeah.</p> <p style="text-align: right;">52</p>

<p>1 MR. SMITH: Okay.</p> <p>2 MR. WAGER: He said he was there when the</p> <p>3 argument over ten bucks occurred.</p> <p>4 MR. SMITH: Did he talk about anyone else other</p> <p>5 than Wade, Glenn and the guy?</p> <p>6 MR. WAGER: There was some guy that they had</p> <p>7 picked up hitchhiking that was drinking with them that</p> <p>8 day.</p> <p>9 MR. SMITH: Okay. Did he describe what that</p> <p>10 guy looked like?</p> <p>11 MR. WAGER: I think he said he had long hair.</p> <p>12 MR. SMITH: Did he describe the hair color?</p> <p>13 MR. WAGER: Blond.</p> <p>14 MR. SMITH: Okay. So a long--blond, long-</p> <p>15 haired guy?</p> <p>16 MR. WAGER: Yeah.</p> <p>17 MR. SMITH: Did he explain whether he knew who</p> <p>18 that blond, long-haired guy was?</p> <p>19 MR. WAGER: No. He said he'd never met him.</p> <p>20 He was just hitchhiking and him and Glenn picked him up.</p> <p>21 MR. SMITH: I see. Did they--did he explain</p> <p>22 where he and Glenn picked him up?</p> <p>23 MR. WAGER: No, he didn't explain where they</p> <p>24 picked him up, he just said they picked him up.</p> <p>25 MR. SMITH: Okay. Did--have you ever been down</p> <p style="text-align: right;">53</p>	<p>1 second time you went to visit him?</p> <p>2 MR. WAGER: We just went to visit him.</p> <p>3 MR. SMITH: Just stuff to--</p> <p>4 MR. WAGER: That's when we were told--</p> <p>5 MR. SMITH: --cheer him up and--</p> <p>6 MR. WAGER: --not to discuss anything with Wade</p> <p>7 or...</p> <p>8 MR. SMITH: Okay. Did someone tell you that</p> <p>9 your conversations at the jail were monitored?</p> <p>10 MR. WAGER: That had been recorded, so...</p> <p>11 MR. SMITH: Okay.</p> <p>12 MR. WAGER: I kind of gathered that.</p> <p>13 MR. SMITH: Jails are not good places for</p> <p>14 confidential conversations, are they?</p> <p>15 MR. WAGER: Right.</p> <p>16 MR. SMITH: After your first visit at the jail,</p> <p>17 have you told anyone else, any of the Utah attorneys</p> <p>18 that have come to visit you, about what Wade told you at</p> <p>19 the jail?</p> <p>20 MR. WAGER: Yeah, I told the attorneys that</p> <p>21 came to see us.</p> <p>22 MR. SMITH: Was that Morrow and the other guy</p> <p>23 or Charlie and the other guy?</p> <p>24 MR. WAGER: Yeah, Morrow and the other guy.</p> <p>25 MR. SMITH: Okay. So you told them about this</p> <p style="text-align: right;">55</p>
<p>1 to Utah--</p> <p>2 MR. WAGER: Nope.</p> <p>3 MR. SMITH: --Mr. Wager?</p> <p>4 MR. WAGER: Never been there.</p> <p>5 MR. SMITH: Okay. So you've certainly never</p> <p>6 been to Brigham City, Utah?</p> <p>7 MR. WAGER: Nope.</p> <p>8 MR. SMITH: Okay. So you've never seen where</p> <p>9 they're talking about?</p> <p>10 (No audible response.)</p> <p>11 MR. SMITH: Do you know where Wade grew up?</p> <p>12 MR. WAGER: Utah.</p> <p>13 MR. SMITH: You don't know where in Utah?</p> <p>14 Okay.</p> <p>15 MR. WAGER: No.</p> <p>16 MR. SMITH: Have you ever heard him mention</p> <p>17 Hyrum?</p> <p>18 MR. WAGER: Huh-uh.</p> <p>19 MR. SMITH: Okay. Now, did you discuss--was</p> <p>20 what--we just went over about the different things Wade</p> <p>21 told you about this incident in Utah. Was that the</p> <p>22 first time you went to visit him at the jail, the second</p> <p>23 time or both?</p> <p>24 MR. WAGER: The first time.</p> <p>25 MR. SMITH: Okay. What did you discuss the</p> <p style="text-align: right;">54</p>	<p>1 discussion you'd had with Wade about what had happened</p> <p>2 in Utah?</p> <p>3 MR. WAGER: Right.</p> <p>4 MR. SMITH: Okay. Did you--did you have an</p> <p>5 understanding or do you know when all this stuff Wade</p> <p>6 was talking about occurred? Like was it last--</p> <p>7 MR. WAGER: Like in--</p> <p>8 MR. SMITH: --year?</p> <p>9 MR. WAGER: --1980 something, he said.</p> <p>10 MR. SMITH: Okay. So Wade told you that it was</p> <p>11 back in--some year in the 1980s?</p> <p>12 MR. WAGER: Yeah. He said he was--he was</p> <p>13 supposed to be 20 or 21 years old or something like</p> <p>14 that.</p> <p>15 MR. SMITH: Okay. Now, I understand--well, let</p> <p>16 me back up because I guess I want to know what you</p> <p>17 understand, not what I understand.</p> <p>18 Did you have any other meetings with any Utah</p> <p>19 attorneys before Christmas other than what we've already</p> <p>20 talked about?</p> <p>21 MR. WAGER: No, I don't think so.</p> <p>22 MR. SMITH: Okay. Since Christmas, up until</p> <p>23 today, you've told me that you had a meeting with Utah</p> <p>24 attorneys about a week ago where they took a written--or</p> <p>25 they took a statement that was with a court reporter</p> <p style="text-align: right;">56</p>

<p>1 here; is that right?</p> <p>2 MR. WAGER: Yeah, and a video camera.</p> <p>3 MR. SMITH: And a video camera. Okay. Other</p> <p>4 than--and I'm going to refer to that as the deposition.</p> <p>5 Okay? Is that a word you're familiar with at all?</p> <p>6 MR. WAGER: No.</p> <p>7 MR. SMITH: Is that what they called it?</p> <p>8 MR. WAGER: I can't remember what they called</p> <p>9 it.</p> <p>10 MR. SMITH: Okay. Well, I'm going to--if I say</p> <p>11 "deposition," I'm talking about that--that particular</p> <p>12 interview. Okay? Other than that deposition, have any</p> <p>13 Utah attorneys talked to you since Christmas?</p> <p>14 MR. WAGER: No.</p> <p>15 MR. SMITH: Okay. Who arranged that</p> <p>16 deposition?</p> <p>17 MR. WAGER: The attorneys from Utah, I guess.</p> <p>18 MR. SMITH: How did you find out about it?</p> <p>19 MR. WAGER: Well, I found about from you.</p> <p>20 MR. SMITH: Scott called and told you. Okay.</p> <p>21 Where was that deposition at?</p> <p>22 MR. WAGER: Downtown at the--well, downtown</p> <p>23 somewhere.</p> <p>24 MR. SMITH: If I said that it was at the</p> <p>25 Federal Defenders' Office--</p> <p style="text-align: right;">57</p>	<p>1 MR. WAGER: No, my mom's attorney was a lady.</p> <p>2 MR. SMITH: Oh, I'm sorry, your--okay. Was it</p> <p>3 a woman named Costello?</p> <p>4 MR. WAGER: Yeah.</p> <p>5 MR. SMITH: Okay. And Lorraine's attorney is a</p> <p>6 guy named Staub?</p> <p>7 MR. WAGER: Or is it Scott?</p> <p>8 MR. SMITH: Scott? Okay. So when they were</p> <p>9 taking your statement, there was Lorraine's attorney,</p> <p>10 your mom's attorney, Mr. Hill, you and who else? Was</p> <p>11 Lorraine and your mom in there also?</p> <p>12 MR. HILL: I want to--</p> <p>13 MR. WAGER: Not at the same time.</p> <p>14 MR. HILL: I want to clarify that. Let's go</p> <p>15 back. When you were giving your statement, who was in</p> <p>16 the room with us?</p> <p>17 MR. WAGER: Oh, it was--</p> <p>18 MR. SMITH: Yeah. Thank you very much.</p> <p>19 MR. WAGER: --him--</p> <p>20 MR. SMITH: "Him," meaning Mr. Hill.</p> <p>21 MR. WAGER: --me, the attorney--</p> <p>22 MR. SMITH: When you say "the attorney," you</p> <p>23 mean--</p> <p>24 MR. WAGER: --from--</p> <p>25 MR. SMITH: --from Utah?</p> <p style="text-align: right;">59</p>
<p>1 MR. WAGER: Yeah. Yeah, that's where it was.</p> <p>2 MR. SMITH: Okay. Did you know where that was</p> <p>3 before you had that deposition?</p> <p>4 MR. WAGER: Nope.</p> <p>5 MR. SMITH: Just gave you an address and told</p> <p>6 you to go to some office and you went there?</p> <p>7 MR. WAGER: We followed him down--</p> <p>8 MR. HILL: Actually, met at my office first and</p> <p>9 they followed me down.</p> <p>10 MR. SMITH: Okay. Excellent. Thank you.</p> <p>11 And who went down with you besides Mr. Hill?</p> <p>12 MR. WAGER: My mom--</p> <p>13 MR. SMITH: Anyone else?</p> <p>14 MR. WAGER: --and Lorraine.</p> <p>15 MR. SMITH: Okay. So your mom and Lorraine</p> <p>16 went down? Did all three of you give a statement that</p> <p>17 day?</p> <p>18 (No audible response.)</p> <p>19 MR. SMITH: Okay. Who all--when they were</p> <p>20 taking your deposition, Mr. Wager, who all was present</p> <p>21 besides Mr. Hill?</p> <p>22 MR. WAGER: My mom's attorney and Lorraine's</p> <p>23 attorney.</p> <p>24 MR. SMITH: Okay. Your mom's attorney was a</p> <p>25 guy named Staub?</p> <p style="text-align: right;">58</p>	<p>1 MR. WAGER: --from Utah.</p> <p>2 MR. SMITH: Do you remember his name?</p> <p>3 MR. WAGER: I can't remember his name.</p> <p>4 MR. SMITH: If I said Ken Brown, would that</p> <p>5 sound correct?</p> <p>6 MR. WAGER: I have no idea.</p> <p>7 MR. SMITH: Okay. And who else? So you; your</p> <p>8 attorney; the Utah attorney, Mr. Brown; the court</p> <p>9 reporter?</p> <p>10 MR. WAGER: (Inaudible) her, yeah. And whoever</p> <p>11 recorded it.</p> <p>12 MR. SMITH: Okay. And that was the woman or</p> <p>13 man that was typing it down?</p> <p>14 MR. HILL: And a video person.</p> <p>15 MR. SMITH: And a person running the video?</p> <p>16 MR. WAGER: Yeah.</p> <p>17 MR. SMITH: Okay. Was anyone else in the room</p> <p>18 when you spoke?</p> <p>19 MR. WAGER: No.</p> <p>20 MR. SMITH: Okay. When your mom's deposition</p> <p>21 was taken, were you in the room for that?</p> <p>22 MR. WAGER: No.</p> <p>23 MR. SMITH: Okay. And when Lorraine's</p> <p>24 deposition was taken, were you in the room for that?</p> <p>25 MR. WAGER: No.</p> <p style="text-align: right;">60</p>

1 MR. SMITH: Okay. Just give me one second
 2 here, Mr. Wager, I'm about... That's all I have for
 3 you, Mr. Wager.
 4 MR. WAGER: Okay.
 5 MR. SMITH: Let me just talk with the officers
 6 for a minute and see if I need to clean up anything.
 7 That's all I have, Mr. Wager.
 8 MR. WAGER: Thank you.
 9 MR. SMITH: Thank you for your time.
 10 UNIDENTIFIED SPEAKER: Thanks, gentlemen.
 11 (Interview ended.)

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C E R T I F I C A T E

STATE OF UTAH)

: ss.

COUNTY OF SALT LAKE)

I, Melinda J. Andersen, a Certified Shorthand
 Reporter and Notary Public within and for the County of
 Salt Lake, State of Utah, do hereby certify:

That the foregoing tape-recorded proceedings were
 transcribed into typewriting under my direction and
 supervision and that the foregoing pages contain a true
 and correct transcription of said proceedings to the
 best of my ability to do so.

IN WITNESS WHEREOF, I have hereunto subscribed my
 name and affixed my seal this _____ day of March 2006.

 MELINDA J. ANDERSEN

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Addendum L

IN THE FIRST JUDICIAL DISTRICT COURT

BOX ELDER COUNTY, STATE OF UTAH

STATE OF UTAH,)
)
Plaintiff,)
)
vs.) Case No. 051100355
)
WADE GARRETT MAUGHAN,)
)
Defendant.)

Transcript of Motion To Disqualify.

Honorable Ben H. Hadfield presiding.
First District Court Courthouse
Brigham City, Utah
February 15, 2006

* * *

APPEARANCES:

For the Plaintiff: H. THOMAS STEVENSON
Deputy County Attorney

For the Defendant: RICHARD P. MAURO
SCOTT C. WILLIAMS
Attorneys at Law

For Mr. Mauro and
Mr. Williamm: KENNETH R. BROWN
MARK R. MOFFAT
Attorneys at Law

RODNEY M. FELSHAW
Registered Professional Reporter
First District Court
P. O. Box 873
Brigham City, UT 84302-0873

FILED
UTAH APPELLATE COURTS

AUG 21 2006

ORIGINAL 20060109-SC

1 **THE CLERK:** Case number 051100355, State of Utah
2 versus Wade Maughan. Counsel, please state your names for
3 the record.

4 **MR. STEVENSON:** Tom Stevenson for the State of Utah.

5 **MR. BROWN:** Ken Brown and Mark Moffat for the
6 lawyers, Mr. Mauro and Mr. Williams.

7 **MR. MAURO:** Rich Mauro and Scott Williams
8 representing Mr. Maughan.

9 **THE COURT:** Please be seated, counsel. I appreciate
10 your attendance this morning. I suspect the roads were
11 marginal on the way up.

12 I've reviewed, I think, everything that has been filed in
13 this case. I did also take time to look at the videos and
14 the DVDs. I haven't viewed a hundred percent of those. I
15 looked at every one of them, but I didn't see them all all
16 the way through to the end.

17 **MR. BROWN:** Did you see Lorraine Rima's video
18 deposition taken by Mr. Smith two or three days ago?

19 **MR. MOFFAT:** It was on a CD, Judge.

20 **THE COURT:** That's the one I didn't. That was on a
21 CD and when I put it in the player that didn't play. The
22 others were on DVDs, but that one was a CD and I couldn't
23 make it operate on the equipment I had. If I need to I'll
24 watch that afterwards.

25 **MR. BROWN:** It is significant, Your Honor, in the

1 sense that she says now that they made no representations to
2 her about anything.

3 **THE COURT:** Okay.

4 **MR. STEVENSON:** It does indeed indicate that she now
5 claims not to recall things that of course she told in the
6 video statement taken by Detective Burbbridge that she did
7 recall.

8 **THE COURT:** All right. Before we begin, I want to
9 take a moment, and I know counsel -- I appreciate counsel.
10 I've met with counsel on this case and this isn't a criticism
11 of anyone. But you'll note there at the table we have the
12 standards of professionalism and civility that Justice
13 Nehring helped promulgate and promote. And I have copies
14 there at the table. This particular issue in this case sort
15 of tests those in the sense that it is a motion to disqualify
16 and counsel's conduct in either filing it or in bringing
17 about the filing become issues. Even so, I expect and assume
18 that counsel can approach this in a very professional manner
19 and I appreciate that. Both counsel are aware of that.

20 Now, with that, Mr. Stevenson, it's your motion. You may
21 begin.

22 **MR. STEVENSON:** As an initial matter I want to make
23 sure, did the court get a copy of Detective Mark Burbbridge's
24 affidavit that was faxed up yesterday?

25 **THE COURT:** Yes.

1 **MR. STEVENSON:** Judge, as the facts that have been
2 set forth in affidavit and sworn statements and police
3 reports, and in the other police reports, indicate, the
4 chronology is as follows. On December 5th the Spokane police
5 department receives a request for assistance to go interview
6 regarding alcohol consumption. They go and visit Ms.
7 Lorraine Rima. And interestingly she talks to them at
8 length. You have a copy of that initial report.

9 There's significant detail as to what he'd been drinking
10 the night before and also the lack of any alcohol on his
11 breath that morning, or any drinking the morning of the
12 statement he ultimately gives to the police that gave rise to
13 the arrest in this case.

14 At the same time, Detective Burbridge is given the name
15 of Randy Wager as someone who had been to see Wade in the
16 jail. The police attempt to contact him on the 5th. They
17 leave a card or a note and ask him to call them. He does
18 call and on the morning of the 6th detectives meet with Randy
19 Wager and Lorraine Rima. Significantly they're told we can't
20 talk to you, we've been told not to talk to the police. That
21 is the unequivocal direction that the police receive
22 initially, we've been told not to talk to the police. The
23 police proceed to get a statement regarding Wade Maughan's
24 independent jail confession to Mr. Wager and otherwise, which
25 I'll come back to because I think that is significant.

1 They then, on the afternoon of the 6th, go back to visit
2 Ms. Rima. And what does she say? She says I can't talk to
3 you now. Even though the day before she had given a detailed
4 statement, I can't talk to you now. Why? Because the police
5 had come.

6 The court has a transcript that's been provided by
7 counsel of Ms. Rima's statement to Detective Burbbridge. It
8 has Detective Burbbridge's sworn affidavit in this case. I
9 would urge the court to consider both, but particularly Ms.
10 Rima's statement. On three or four occasions she indicates I
11 was told not to talk to the police. I was told not to talk
12 to anybody.

13 As counsel goes at great lengths to point out, Ms. Rima
14 is confused at times. She is confused at times. That was
15 something that was in the report provided by Detective
16 Burbbridge and which we made a point of providing to the court
17 when this motion was filed.

18 What happens next is -- let me finish. The detectives
19 also interview Ms. Raney and a Ms. Kimberly, I believe is her
20 name. There were four people that confirm they were told not
21 to talk to the police. That is an initial explanation given
22 by four separate people.

23 Interestingly, after the 8th of December, the story
24 changes. We know from counsel's brief, counsel for counsel's
25 brief, that on the 8th of December Scott Williams and an

1 investigator hired by the defense, go and visit the witnesses
2 again. And there the witness statements change. It's very
3 interesting what they change to. What they change to is,
4 well, we were told not to talk to anybody. But here's the
5 important part. The context is made clear that they told us
6 the police would be coming to see us and we were not to talk
7 to anybody. I don't think that that is significantly
8 fundamentally different from the first instruction of not
9 talk to the police. Ultimately I think it has the same
10 problems and the same issues.

11 Those initial reports are indicative of lots of things.
12 One, clearly the Spokane authorities acted properly in making
13 an arrest at the time they did. The arrest takes place, as I
14 understand it, the night of December 6th when they've been
15 told unequivocally we were told not to talk to the police. I
16 would submit that even under the second version, in the
17 context of being told the police are coming to see you, we
18 were told not to talk to anybody, it would have been proper
19 and appropriate.

20 The court is aware that Rule 3.4 of the Rules of
21 Professional Responsibility are applicable here, because
22 unless someone is a client you cannot counsel them not to
23 talk to others, unless, one, they're a relative of your
24 client, an agent or an employee. Nowhere is that disputed.
25 They haven't argued it. They haven't even attempted to say

1 that 3.4 doesn't apply.

2 So, as of the 8th of December we have an issue where not
3 only is there apparently an unlawful obstruction under 3.4,
4 but there's also evidence, at that point at least, of witness
5 tampering. The police make an arrest.

6 Counsel has gone to -- counsel for counsel, I should say,
7 has gone to Spokane and taken sworn statements of Ms. Rima
8 and Mr. Wager. And those statements are interesting.
9 Putting aside the nature of the questioning, both are
10 adamant, we were told not to talk to anybody. Indeed, on
11 page 11 of Mr. Wager's statement to Mr. Brown, "I just went
12 with what they told me. They told me not to talk to
13 anybody."

14 If you'll look at Ms. Raney's statement she essentially
15 says, page six, again, "No. They said not to talk to
16 anybody." The very statements that Ken Brown support the
17 proposition that there was a problem, whatever it was, that
18 took place on either the 6th or the 8th.

19 I want to talk about Randy Wager's statement given to Mr.
20 Smith last Friday. I want to apologize to the court for not
21 having a transcript yet. That video interview made its way
22 back to Utah on Saturday and we simply have not been able to
23 get it transcribed. We will pass on a copy, when it is
24 transcribed, to the court and counsel. Mr. Smith goes at
25 great lengths to interview Mr. Wager in a way that's not

1 leading to try to get to his knowledge. And several things
2 come up. Several that were a surprise.

3 One, he acknowledges on the 6th telling Mr. Mauro and Mr.
4 Cilwick that Wade Maughan admitted to being present at the
5 murder. He also admits to describing the general events. I
6 think that raises, at least on some level, a problem for
7 counsel going forward with nothing more simply because how is
8 he going to cross-examine Mr. Wager now when we have Mr.
9 Wager's video statement saying I told him. It's a problem.

10 But there's more to it than that, Judge. Mr. Wager's
11 version, taken in the sworn statement Friday, has a
12 significant change from what he told Detective Burbridge
13 initially. And that is he now claims that it was the
14 cashier, Bradley Perry, who grabbed the screw driver in the
15 mix of this fray. The significance of that is it interjects
16 in this case at least a theoretical potential for an
17 imperfect self-defense; and that will be a central part of
18 these proceedings going forward.

19 At trial Mr. Wager will be called by the state. He's
20 going to be asked to talk about Wade Maughan's admission to
21 him to being present at the murder. He's going to be asked
22 what those specifics were. And that statement is going to
23 come up and we're going to be entitled to ask him why he told
24 a different statement to Detective Burbridge initially. And
25 I think in the process of doing that we're going to be able

1 to explore his bias. And his bias is pretty apparent in his
2 statements. He perceives things as these guys are against
3 Wade and these guys are for Wade. He makes that point in his
4 statement to Mr. Brown. But we're going to be entitled to
5 inquire about Mr. Wager's bias and the reason his statement
6 changed.

7 And in that context, Judge, the statements that counsel
8 were directing to him, whether it's not to talk to the police
9 or in the context of the police are coming to see you, not to
10 talk to anybody, I believe will come in. The jury may
11 ultimately end up hearing about the arrest. We view it as
12 putting Mr. Mauro in an impossible position. It is simply an
13 impossible position for him. I don't think there is any
14 reasonable way out for him with that issue.

15 I want to talk about Mr. Williams for a moment. When the
16 motion was filed we weren't certain it was Mr. Williams who
17 had even traveled to Spokane and visited with the witnesses
18 on the 8th of December. Fortunately they made that clear in
19 their brief that it was Mr. Williams and an investigator. We
20 are troubled, Judge, because, as indicated in the police
21 reports, all of a sudden the same four witnesses who were
22 unequivocal about they told us not to talk to the police,
23 after that visit on the 8th they changed their story. And we
24 think it raises essentially the same issues with regards to
25 Mr. Williams's conduct or his -- I want to rephrase that.

1 His ongoing involvement in this case.

2 I think in the same way and manner, Mr. Williams's
3 involvement in discussions on the 8th will come into play
4 when Mr. Wager at trial, in front of a jury, is asked to
5 explain the context of being told not to talk to the police
6 or being told he had a misunderstanding and his changing
7 statement. We think the issues of bias will similarly bring
8 it in given Mr. Williams's -- given the way this went down.

9 Judge, we've raised other issues regarding Mr. Williams
10 in the brief. The court is aware of those. I think I will
11 simply wait to address those on rebuttal, see what counsel
12 has to say. Perhaps they can give us an explanation that
13 will go to some of the concerns we've expressed in our reply
14 brief.

15 I want to talk about the conflict of interest cases,
16 Judge. I think that is the starting place for you. We've
17 never found a case where counsel had already been arrested in
18 the very case they were attempting to defend someone on.
19 They'd been arrested for tampering with critical witnesses.
20 We haven't found it. I don't think that means the cases
21 cited don't apply. I don't think that can fairly be argued.

22 Secondly, conflicts of interest as noted in the Wheat
23 decision are problematic because, even as the Supreme Court
24 says, "experienced trial counsel lack the ability to foresee
25 the imponderables," that's the word they used, "as conflicts

1 come up and how those consequences might go forward in a
2 case."

3 There's something about those conflict cases, something
4 else that needs to be addressed, and that is if the court
5 peruses the conflict of interest jurisprudence in the
6 criminal context, they are almost all cases where the
7 conflict comes to light at trial or on the eve of trial.

8 This case is unusual in that this has come to light 30
9 days from the day the initial appointment was made. And in
10 that sense it is different from all the other conflict cases
11 that have been cited to the court by any of the parties.
12 It's the state's position that it makes this case very
13 different in that it makes it much harder for any of us to
14 ascertain the consequences of those conflicts. It makes it
15 much harder for any of us to ascertain whether Mr. Maughan
16 can make a knowing and voluntary waiver of those conflicts.
17 And it makes it, in our judgment, extremely unwise to go
18 forward knowing we have the problem today.

19 Judge, our office has counseled extensively with the
20 attorney general's office in this matter. They feel so
21 strongly about this that they've indicated their intention,
22 if the motion is denied, to file an interlocutory appeal.
23 And the reason is simple. Whatever you do today is likely to
24 be the subject of an appeal. But it's the state's position
25 that it's much less likely to lead to reversible error if the

1 motion is granted. Why? Because we're at the very beginning
2 of this case.

3 Secondly, we're dealing with a situation not where Mr.
4 Maughan went out and interviewed a number of attorneys and
5 hired counsel of his choice. We're dealing with appointed
6 counsel. Mr. Maughan has an interest in having counsel of
7 his choice. The Wheat decision reflects that, the Arguelles
8 decision reflects that. But they also make it clear that the
9 point is not that personal relationship. The point and the
10 focus is that there be effective representation. This case
11 is different even from those, as I recall the facts, in that
12 this is appointed counsel.

13 There's been much suggestion in this case that things
14 have been withheld from the court; or that information going
15 to the credibility of certain witnesses, Ms. Rima, for
16 example, were not shared with the court. I think the court
17 sees that Mr. Burbridge's report was attached and that he
18 himself referenced that she remained adamant, notwithstanding
19 her confusion at times, that she was told not to talk to the
20 police. Is there a significant difference in the word
21 adamant and steadfast? I'll leave that for the court to
22 decide.

23 I do, however, want to make a comment that this is in
24 indeed an adversarial process. And while the state, as
25 relates to Mr. Maughan, has a Brady duty to bring things

1 forward, we do not view it as our obligation, particularly as
2 to this motion to disqualify, to shed on everything that they
3 might find helpful to credibility issues. It's an
4 adversarial process and it only works as an adversarial
5 process.

6 I want to speak briefly about the Elzinga allegations.
7 As indicated in the briefing, Ms. Elzinga came in and made a
8 report to the police. We didn't go looking for that report.
9 We didn't ask for the report. And indeed, as in the case in
10 all of the -- most of local law enforcement's witness
11 statements, it contained a provision that it was made subject
12 to the penalties of law if it was made falsely.

13 At the time Ms. Elzinga's statement was made to the
14 police, as the chronology set forth in the brief indicates,
15 we had already written counsel for counsel. Excuse me. It
16 may have been actually to counsel. And told them that we
17 were proceeding with the motion to dismiss. The Elzinga
18 things were added after that decision had already been made.

19 As I've indicated in the brief, Ms. Elzinga is adamant
20 that Mr. Mauro visited her and represented himself as a
21 Channel 2 reporter. Our investigation suggests that that
22 event could not have occurred at the time she claims it did.

23 More problematic for the state, we have independently
24 reached a conclusion that her credibility is so suspect,
25 given the conflicting loyalties to the Perry family and

1 apparently some relationship with Mr. Glenn Griffin, that we
2 are not comfortable relying on her.

3 We have submitted to the court -- let me take a step
4 back. When we came to the conclusion that there were
5 questions on her timing and came to the conclusion that there
6 were questions regarding her reliability, without being
7 requested to we sent counsel for counsel a copy of the search
8 warrant information that indicated the location of the cell
9 tower Mr. Mauro's cell phone was bouncing a signal off of.
10 We also sent them correspondence copied at the jail between
11 Ms. Elzinga and Mr. Griffin. And it was done because, as we
12 concluded, there were serious questions.

13 Counsel has gone to lengths to suggest that somehow the
14 state has hidden information of credibility; that the state
15 has misled the court. And as the court can imagine, we take
16 issue with those assertions. I will let the record simply
17 reflect what it is. In any event, at this time the state
18 does not feel it can rely on Ms. Elzinga for these
19 allegations and has indicated in the brief, and suggested to
20 the court, wholly ignoring them for purposes of this motion.
21 That may or may not be the end of these issues with her. The
22 court may have an issue to hear from her. Counsel may have
23 an issue to hear from her. There may be civil, even other
24 criminal proceedings. I don't know. But at this point we do
25 not feel it would be appropriate, given our independent

1 questions regarding her reliability and credibility, to go
2 forward on that.

3 Judge, we would ask that the court disqualify the
4 attorneys at this time.

5 I want to talk about an evidentiary hearing issue for a
6 moment. I know that's an issue that has been raised. We
7 believe the court has sufficient information in front of it
8 today, in the form of Detective Burbridge's affidavit that
9 was filed yesterday and his police report that was submitted
10 under oath, to make that decision. You have in front of you
11 the video statement taken of Mr. Wager last Friday. You have
12 the sworn statement taken by Mr. Brown which fundamentally
13 says they told us not to talk to anybody. We believe that is
14 sufficient at this time for the court to make a decision.

15 However, if the court is inclined to hold an evidentiary
16 hearing, I think we need to talk about the parameters of
17 that. We need to talk about what it would entail and what
18 those issues are. Firstly, I think we need to know are Mr.
19 Mauro and Mr. Williams going to take the stand? Are they
20 going to be limited -- are we the state going to be limited
21 in cross-examination?

22 Secondly, we need to define what the issues would be. If
23 the issues are was there a reasonable basis to make this
24 arrest, given what the police were told, we'll bring the
25 detectives here and put them on. I believe the court will

1 find that they are credible as any law enforcement that have
2 appeared in this court. If counsel want to then call Ms.
3 Rima or Mr. Wager, they can do so. But I think at the end of
4 the day the court will conclude that certainly applying a
5 standard of is there sufficient evidence to bind people over,
6 there is evidence that something went awry when Mr. Cilwick
7 and Mr. Mauro visited these witnesses.

8 If the court is inclined to go forward with an
9 evidentiary hearing we will request time to take some
10 additional depositions. We'll seek, one, an order from the
11 court permitting it; and, two, asking assistance from the
12 Washington State court to permit subpoena authority to go
13 forward. As raised in the brief, we think there are issues
14 that need to be followed up on as to who is directing, who is
15 being reported to, maybe even who is paying for these
16 attorneys. It is something that does not pass the smell
17 test. That is an issue that needs to be followed up, and if
18 the court is desirous of an evidentiary hearing we will ask
19 for time to get that accomplished.

20 Given the reluctance of Mr. Stobb, Lorraine Rima's
21 attorney, and a Mr. Hill, who is Randy Wager's attorney, to
22 have questions asked about how they were hired, who is
23 paying, who is directing, I think questions exist today that
24 need to be answered before this can go forward any more if
25 the court desires an evidentiary hearing.

1 I'm sure I'll have lots more to say on rebuttal.

2 THE COURT: Let me ask you one question. Earlier in
3 your statement, Mr. Mauro interviewed Wager up in Spokane.
4 You're not suggesting that counsel ought not to interview
5 witnesses, are you?

6 MR. STEVENSON: Unequivocally I'm not. And counsel
7 for counsel has made the point that there are special
8 obligations among defense counsel, particularly in capital
9 cases, to undergo and undertake a significant investigation.
10 I don't dispute that. I would suggest that I don't think
11 that obligation is any more or less in any criminal case.
12 But as far as a suggestion that they ought not be
13 interviewing witnesses, we haven't made that suggestion at
14 all.

15 The point here is if, for whatever reason, even if it's
16 just bad luck, you go and interview witnesses and find
17 yourself in jail the next night arrested for witness
18 tampering, there's a problem. It's a problem that has to be
19 addressed. It's a problem that must be brought to the
20 court's attention. And the ramifications need to be
21 considered. Particularly in a case where there's as much at
22 stake as there is here and where a jury is going to be
23 listening to these witnesses. And more importantly making
24 credibility decisions about the defendant based on their view
25 of the credibility of his counsel.

1 **THE COURT:** Okay. Mr. Brown.

2 **MR. BROWN:** Your Honor, I appreciate the opportunity
3 to stand before you and argue on behalf of these two lawyers
4 here and the investigator that I have a great deal of respect
5 for. I want to get to that argument. But I hope that the
6 court is not -- that was about the closest thing to judicial
7 blackmail that I have ever heard in terms of the attorney
8 general and they will appeal a decision. I think there's a
9 correct decision, a right decision, to be made. I have every
10 confidence in this court ferreting through this information
11 and making that correct decision.

12 Before we get into the so-called facts of the case, I
13 think it's important at this point, Your Honor, and I would
14 ask the court to step back for a moment and let's look at the
15 forest instead of the trees. We have a situation here where
16 competent, effective, ethical attorneys have been appointed
17 to Mr. Maughan. Mr. Maughan has formed a relationship with
18 those attorneys. These attorneys have engaged a mitigation
19 person who is working at their direction in establishing
20 mitigation evidence. They are working on this case.

21 These individuals that accepted this appointment to
22 represent Mr. Maughan did not accept that appointment with
23 the idea that this -- that these cases are money makers. I
24 assure you of that, Your Honor. People that accept
25 appointments to represent an accused that are facing the

1 death penalty, I would dare say, do it. And as a result of
2 doing it they suffer greatly. Years are taken off of
3 lawyers' lives who represent those people. And they're taken
4 off because they are passionate about their job. They
5 understand their duty. They understand their obligation.
6 They understand the heavy responsibility that is placed on
7 them as lawyers. And that's not something that these two
8 individuals take lightly, I can assure you. From the list of
9 qualified lawyers, Your Honor, you have two of the best.
10 That list contains a number of people. And I can assure this
11 court that these two people understand what is involved.

12 What they did in this case, they did nothing wrong.
13 Think about what happened. They got appointed to represent
14 this man. They made some telephone calls to his common law
15 wife. They arranged to go up and meet her and other friends
16 after they had discussed this matter with their client, Wade
17 Maughan. That is precisely what they're expected to do.

18 I appreciate very much the amicus curiae briefs that have
19 been filed by Mr. Hart, the UACDL president, who is here,
20 along with Tiffany Johnson and other members of the UACDL. I
21 appreciate the fact that they have set out the obligations of
22 attorneys when they are appointed to represent individuals
23 charged with capital crimes.

24 These attorneys did precisely what they were supposed to
25 do. They went up, and they interviewed some people. Counsel

1 is suggesting that the fact that they received some
2 information from this person he says creates a problem. Your
3 Honor, I have watched him at this podium lay out facts and
4 circumstances that I guarantee happen in every case. The
5 court is aware of that. Witnesses tell lawyers something.
6 Witnesses tell cops something different. It happens in every
7 single case.

8 These two lawyers, out of an abundance of caution and
9 because they understand the importance of it, took a very
10 qualified investigator with them. The only reason for the
11 investigator to be there is to be a witness should it be
12 necessary down the line. This is like -- this is common
13 knowledge among any lawyer that tries cases anywhere. So,
14 the fact that this witness that Mr. Stevenson says told them
15 something, and then he says this creates a problem, it
16 doesn't create a problem at all. Where is the problem with
17 that? There will always be different versions.

18 Interestingly enough, the state has a written, signed
19 confession from Mr. Maughan. They have witnesses that say he
20 told me this. And they have a different version of that.
21 Where is the problem? The bias of that particular witness
22 that took the statement, that received the confession, if you
23 will, is always going to be there. It won't matter whether
24 its lawyer A or lawyer B, it simply won't matter.

25 The court has a decision to make. It's whether or not to

1 disqualify these lawyers. The state says, well, there's
2 going to be problems down the line. Let me -- I've talked to
3 Mr. Stevenson about the problems down the line. I've tried
4 to be as honest and frank as I can about those problems down
5 the line. If this court makes a decision to remove these two
6 lawyers at this point, then every decision that is made with
7 the next lawyer will be compared against the perfect lawyer.
8 I'll say that again. It won't matter what decision is made
9 by lawyer number two. It won't matter what these two
10 individuals would have done. It will be compared on an
11 ineffective assistance of counsel claim as compared to a
12 perfect lawyer. That is the reality. That is the fact.

13 And if this court jeopardizes the relationship, the
14 strong presumption in favor of not removing counsel, based
15 upon these allegations, and Mr. Maughan's preference to have
16 these lawyers represent him, this team represent him in the
17 face of this, then every decision, if you're talking about
18 reviewing ineffective claims, are going to be reviewed
19 against a standard of what would the perfect lawyer have
20 done. That is the reality of it. So, instead of eradicating
21 a problem, the problem is amplified by removal because it
22 creates problems.

23 Secondly, whatever conflict exists, and this these are
24 broad concepts, but whatever conflict may exist and whatever
25 probative value it may have to ask the witness did the lawyer

1 tell you to not talk to the cops, that exists whether these
2 two individuals are sitting representing Mr. Maughan or not.
3 If it's relevant and probative for the state to pursue that,
4 it's relevant and probative regardless of who is sitting
5 there.

6 So, I've tried cases in this courtroom before and I know
7 this court. I know the court controls and has a good grasp
8 of the evidence that's admissible and relevant evidence. I
9 cannot conceive of how on earth it would be relevant or
10 probative for a witness to be asked any questions about the
11 arrest of these two individuals. I cannot -- when you boil
12 down the conflict argument, let's take it at it's very worst.
13 A lawyer says don't talk to cops. Cops come and they talk to
14 the cops. Now, how is it relevant, how is the statement, and
15 I want Mr. Stevenson to articulate for us, how is it
16 relevant, how does it provide bias on redirect, as he
17 suggests, to say did the lawyer tell you not to talk to the
18 cops? Would the court even allow that question? Is it
19 probative to anything? And remember, that's all that
20 happened in this case. I would represent that there will
21 never be a criminal case in Washington because there was no
22 criminal conduct that occurred in Washington. All there was
23 was an arrest.

24 Now, I hope the court has looked at these recent files
25 from Mr. Costello, the lawyer for one of the witnesses. It's

1 rather telling regarding Detective Burbridge. He leaves a
2 message and -- people are entitled to hire lawyers, to have
3 lawyers. That's not an issue. However, it seems to be with
4 Mr. Stevenson. This lady has a lawyer, Alta Raney. And the
5 lawyer calls Detective Burbridge and says whenever you want
6 to talk to her go through me. This is the message that she
7 gets back from Detective Burbridge, who the state relies
8 upon. And this is recorded so it's verbatim. "Detective
9 Mark Burbridge calling you back referencing Alta Raney. I
10 understand you are representing her. Ms. Raney is a witness
11 in a homicide in Utah. I'm assisting them. As a witness,
12 she has no constitutional protection right to an attorney. I
13 will go contact her any time I need to. As a courtesy I may
14 call you, but I may not. Just letting you know. You need
15 something, give me a ring."

16 The affidavit of the lawyer who has discussed this with
17 her clients. She goes through and says just the opposite.
18 In fact, Mr. Cilwick and Mr. Mauro cautioned the witness, her
19 client, not to contact their clients or share accounts with
20 other witnesses in the interest of not compromising the
21 integrity of the accounts they were providing.

22 I think it's interesting if you look at -- now, remember,
23 these witnesses, these lawyers, either had in mind to tamper
24 with witnesses or not, and yet there is not one suggestion,
25 not one allegation, not one offer, not anything about you've

1 told us about this confession, please don't tell the cops
2 about the confession. You've told us about this confession.
3 Can't you change it somehow. Can't you make it this, make it
4 that. There is not one suggestion. All the allegations have
5 been, Your Honor, consistently either don't talk to anybody
6 or don't talk to the police. And I don't think the court, in
7 fairness, can really understand and believe at this state --
8 at this stage in the proceedings that these gentlemen ever
9 said don't talk to the cops or the police.

10 You know, we had this meeting in chambers and we say,
11 well, we're not sure we want to have an evidentiary hearing.
12 Why don't you see if you can proceed by way of affidavit. So
13 we have the police reports from Detective Burbbridge. There
14 isn't one person, except him, who has ever said these
15 witnesses said don't talk to police officers. That is an
16 astonishing fact. That is astonishing. Only the detective
17 has said that.

18 We go up and we talk to them and we put them under oath
19 and we ask them what did the lawyers say. They said don't
20 talk to anybody about the case. It's interesting that they
21 claim that Raney, that Wager, rather, said, well, the cops
22 are going to want to talk to you. There's some reference to
23 the cops. Wager, in his sworn statement to me, said when he
24 called Burbbridge back he thought he was talking to a lawyer,
25 another lawyer of Wade's. So it doesn't even factually fall

1 that there was any discussions about cops wanting to talk to
2 these individuals or anything else. The truth of the matter
3 is they went up there and they talked to individuals and they
4 attempted to ferret out information, which they are entitled
5 to do, with an investigator there. And that's all that
6 happened.

7 All of this business about what happened in Spokane is
8 irrelevant to the proceedings in Utah. It's not probative
9 and it's not relevant. It doesn't create a conflict in and
10 of itself. It can't. If you look at the conflict, the
11 conflict has to be something that the state can articulate.
12 They simply can't say that because they were arrested this
13 creates a conflict. How is Mr. Mauro going to be comprised
14 in cross-examining witnesses simply because he was arrested?
15 It doesn't follow.

16 How can that -- if the facts are as they are, they were
17 told not to talk to anybody, they talked to the cops. They
18 have the bias. Randy Wager has a bias. It won't matter
19 who's there. The bias is in favor of his friend Mr. Maughan.
20 That's known. That's out there. These lawyers received it,
21 the state received it. The bias has to go with the party,
22 not the lawyer. It wouldn't matter whether it was these
23 lawyers or any other lawyers cross-examining that witness.
24 It simply wouldn't matter. It's either relevant or it's not.
25 I see no circumstance under which it would be relevant to

1 establish that he said don't talk to the officers.

2 I would suspect that in every case that this court hears
3 there is disagreement about what this witness may have said.
4 And the witness may have said this on this occasion and this
5 on another occasion. That happens in every single case.
6 There is never a suggestion by anybody that these men told
7 these witnesses to do anything with that confession. Not
8 even a suggestion. Yet the state wants to say that because
9 they received that confession from a witness, that that
10 somehow creates a conflict. I quite frankly cannot see it.
11 Perhaps the court can see that. I can aid the court in
12 arriving -- in analyzing that particular issue, because I
13 don't see it.

14 So you have the broad -- and for their acceptance of that
15 employment, of that appointment to represent Mr. Maughan,
16 these lawyers have been arrested. They've been accused of
17 being a Channel 2 reporter. They have been accused of
18 tampering with witnesses. All in a public filing with this
19 court.

20 It's interesting to note that at the time the motion to
21 disqualify was filed there was much about the Elzinga matter
22 that was not disclosed to this court. The fact that she had
23 been sharing -- at least sharing information. You cannot
24 read -- you can't look at that interview of her, that taped
25 interview of her at the end where she says I've been sharing

1 this, yet that none of that was shared. And from the very
2 beginning --

3 **THE COURT:** Let me ask you a question on that.
4 Having read everything, I think I agree with Mr. Brown that
5 the Elzinga issue is now not relevant. I think that's what
6 Mr. Stevenson said as well. I recognize she says she's
7 sharing information, but I think I saw Deputy Cosgrove's
8 affidavit yesterday where he says they've never worked with
9 her, she's never been somebody that they've had any dealings
10 with.

11 **MR. BROWN:** Never directed her, I think. It's
12 another question as to whether or not that information was
13 shared. I don't know the answer to that.

14 **THE COURT:** She came to them and it would appear to
15 the court that this individual, for whatever reason, tried to
16 insert herself in this case.

17 **MR. BROWN:** But understand this, Your Honor. I
18 mean, all of that is placed in a public filing involving
19 these lawyers. And so to the extent that we have been
20 somewhat outraged in our pleadings, it is born of that. I
21 mean, all we did is do what we're supposed to do. I'm
22 speaking of the lawyers, I'm not saying me.

23 Now, if you can articulate for me a legitimate conflict
24 that arises -- that would affect this trial, I would be happy
25 to address that. But simply saying because they were there

1 and interviewed a witness and the witness told them about a
2 confession; or there's an allegation that you said don't talk
3 to anybody, that that somehow is relevant to -- that that
4 somehow creates a conflict between Mr. Maughan and his
5 lawyers, I just don't see that. There is no conflict between
6 Mr. Maughan and his lawyers as a result of that.

7 However they decide to cross-examine that witness,
8 however they decide to develop their theory of the case will
9 be in the best interest of Mr. Maughan, rest assured of that.
10 Whatever happened in Spokane is not -- I don't see how it can
11 possibly -- I mean, think about it. Are you going to hold
12 back and not cross-examine this person because it may
13 disclose that you've been arrested, or that you said don't
14 talk to the police? How is that ever -- I mean, let's say he
15 said it. These individuals have talked to the police. They
16 didn't withhold information.

17 And the statement changes. It changes in every case. I
18 don't know how many cases Mr. Stevenson has done, but it
19 always happens. Part of the problem, I think, is we're
20 dealing with perhaps -- I know these lawyers have represented
21 people that have been accused of capital crimes. I'm not
22 sure Mr. Stevenson has prosecuted people that have been
23 accused of this crime. That may be part of the problem here,
24 Your Honor. These problems that he points out happen in
25 every, every, case. The only thing that happened in this

1 case of an unusual nature, the only reason we're here, is
2 they got arrested. But that in and of itself doesn't create
3 a conflict. Am I missing it? Does the fact that Mr. Mauro
4 was arrested, does that create a conflict? I think not.
5 It's a fact and circumstance. It shouldn't ever be in front
6 of the jury that considers the Wade Maughan matter. I'm sure
7 this court would take great care in making sure that doesn't
8 happen. And I'm sure if it did happen there would be a
9 cautionary instruction.

10 These problems can all be dealt with at trial. They do
11 not create the sort of mammoth problem that Mr. Stevenson is
12 portraying here. We have very disputed accounts of what the
13 Spokane people say or didn't say. You can look at that and
14 say, yeah, they've said this, they've said that. Ms. Rima is
15 either steadfast or not. I mean, I represent to you as an
16 officer of the court, when I looked at that video, at her
17 statement that was taken by Mr. Smith, and she said they
18 didn't tell us anything. That's what she said. And yet she
19 is the person that Mr. Stevenson said is steadfast that they
20 said don't talk to the cops. That's all we're saying, is
21 they provide us with a police report and we go up and talk to
22 these people and they don't support the police report. Look
23 at Mr. Wager's account.

24 And this suggestion, Your Honor, and I promised myself I
25 wouldn't get into the minutiae, but this suggestion that

1 somehow Scott Williams, along with an investigator, created
2 confusion on their part. That is laid to rest -- read the
3 sworn statements of these witnesses. They were asked did
4 they create confusion or were -- or are those your words.
5 Did you say you were confused. Yes, those are my words.
6 They're not Scott Williams's words. He didn't go in there
7 saying, listen, you must be confused. That's not what Ken
8 Brown says, that's what the witnesses tell me under oath.
9 There's no question about that. Look at it.

10 Alta Raney, some question -- and then you get an idea of
11 who these individuals were dealing with through Detective
12 Burbridge when you read the message that he left on a lawyer's
13 answering machine. I'll talk to this person who is
14 represented by a lawyer. I'm not saying -- she may not need
15 a lawyer, but she has one. If a cop shows up at Bill Gates's
16 door step I guarantee he'll be dealing with the lawyer.
17 There's nothing wrong with that in America.

18 The lawyer says please deal with me when you want to talk
19 to her and he leaves a message that says I will talk to her
20 and I will let you know maybe and maybe not. And the lawyer
21 says any more of this and I'm going to seek a restraining
22 order. It has nothing to do -- so you get an idea of the
23 attitude. And Mr. Stevenson says he was fully justified in
24 making an arrest. That statement is highly disputed, as you
25 can guess, because the witnesses, the very witnesses that he

1 relies upon, do not support his police report. They never
2 have.

3 From the second interview, when it was said these people
4 told us, if anything, don't talk to anybody. It was never
5 don't talk to a cop. Not one person has said that except
6 Detective Burbridge. It was always at most don't talk to
7 anybody about this case.

8 We get an explanation for that. To tamper? No. To keep
9 it pure. There is some merit in telling people don't talk to
10 a lot of people about this. You may have a version of this
11 that's all yours. I don't want to get it contaminated with
12 his and his. That's what the lawyer is telling -- what his
13 own client, the recipient of that advice, said.

14 So, as you look in terms of the broad picture here, what
15 did they do that was wrong and how does it create a conflict?
16 And weigh that against the very important Sixth Amendment
17 rights that Mr. Maughan has with these lawyers. This isn't a
18 fungible sort of thing. Relationships are forged. They're
19 forged with Mr. Maughan. He has great respect for these
20 individuals. He has great confidence in these individuals.
21 He wants them to be his lawyers.

22 If you allow the State of Utah to select and to remove
23 these lawyers, that's a problem that will not go away soon,
24 Your Honor. I think, if you look at the integrity of the
25 process, which is what we ought to be talking about here, the

1 lawyers were properly appointed. They're qualified to do the
2 work. The state has suggested a that they did something
3 improper, but when you hold it up to light of day and sure
4 enough they didn't. All they can say is they were arrested
5 and that that somehow creates a problem. Somehow him telling
6 that witness not to talk to the cops is going to be relevant
7 to bias. It isn't and won't be. They talked to the cops
8 anyway. They didn't not talk to the cops. They did talk.

9 So how is the lawyer saying don't talk to the cops -- and
10 it's never -- there's never been a suggestion that they said
11 change what Wade said about the confession. Never a
12 suggestion about that. Not one of these witnesses, not
13 Burbridge, not anybody, has said anything like that. If they
14 were really going to tamper with witnesses that's what it
15 would be all about. That's proof that there was no tampering
16 with a witness. At most it was a misunderstanding up in
17 Spokane.

18 I would welcome any questions that the court has and I
19 would also ask for some response time to Mr. Stevenson.

20 **THE COURT:** I don't have any questions at this
21 point.

22 (Pause in the proceedings.)

23 **MR. BROWN:** Mr. Williams, I believe, raises a good
24 point. He would like to speak to the issue of the
25 relationship between Mr. Maughan and these lawyers if the

1 court would allow that.

2 **THE COURT:** I guess the difficulty is this. I
3 assume there's a relationship there. I mean, I have no
4 reason not to assume that. I've asked Mr. Maughan if he
5 wants to retain them and he said yes, he does. I'm not sure
6 what could be added.

7 **MR. WILLIAMS:** The point is that the case law speaks
8 fairly heavy, especially in light of the Sixth Amendment
9 right.

10 **THE COURT:** But I think Mr. Brown can talk about the
11 case law.

12 **MR. WILLIAMS:** But there's a factual basis to
13 support the language of that case law and talking about the
14 nature of the bond, the trust, the history, especially in
15 light of two factors the government has talked about, a
16 deafening silence in respect to the nonstatements and
17 nonresponse of Mr. Maughan and myself as counsel in this
18 case. Notwithstanding what I understood was the agreement
19 that the present way of proceeding with counsel for counsel
20 is the most appropriate way to preserve Mr. Maughan's
21 interests.

22 But secondly, they've also cited the early -- the fact
23 that this comes early in the defense and the appointment
24 process. I do not want the record to in any way suggest that
25 because of that fact there hasn't been time to, occasion to,

1 or the actual establishment of diligent efforts in the case,
2 significant efforts, of contacts with clients and family.
3 And the establishment of a close bond, one of trust and the
4 unequivocal statements of Mr. Maughan to us of his desire to
5 have us represent him.

6 **THE COURT:** Mr. Brown, you can confer with your
7 clients and then make any further argument you like. I think
8 that's the way I would prefer to proceed.

9 **MR. BROWN:** I just wanted the court to understand
10 that they do have a relationship and it's a good one.

11 **THE COURT:** All right. Mr. Stevenson.

12 **MR. STEVENSON:** Judge, let me just clarify one thing
13 for the court. I'll direct the court's attention to exhibit
14 H, the statement of Detective Joe Peterson. He also makes it
15 clear that these witnesses -- that Rima said both of these
16 people told her not to talk with the police about the
17 investigation. It's exhibit H. Counsel has made a point of
18 saying no one but Burbridge ever made that statement. That
19 was part of the motion filed with the court originally.

20 I think it's important to talk about the context. The
21 context is what? Apparently Mr. Wager shares with Mr.
22 Maughan's attorney and the investigator his confession, his
23 admission, whatever. At some point there's a direction. Is
24 it don't talk to the police? That's what the police were
25 told initially. Even by Ken Brown's own interview, it's they

1 told us not to talk to anybody.

2 Judge, all you need to do is look at Rule 3.4 and see
3 that there is a problem here. Rule 3.4 would prohibit that.
4 I haven't heard it argued to the contrary.

5 I've heard for the first time that Ms. Rima is the common
6 law wife of the defendant. We would like the opportunity to
7 brief the court on common law marriage in the state of
8 Washington. We don't believe that to be the case. If Mr.
9 Brown is correct in that assertion, Rule 3.4 may not apply as
10 to any direction to Ms. Rima, but it certainly wouldn't apply
11 to the direction to Mr. Wager. He's no relationship, he is
12 no employee, he's not an agent. I've heard nothing to
13 suggest that 3.4 is somehow not at issue here.

14 The state is not making any attempt to select an
15 attorney. We are fulfilling our duty and our obligation, as
16 we perceive it, to bring these matters to the attention of
17 the court early on in the proceedings. The court is aware of
18 post-conviction appellate practice in our country today. If
19 this case goes forward, if the state ultimately seeks the
20 death penalty, and if there's ultimately a conviction for
21 that, this case and the decisions we are addressing today
22 will be reviewed for decades. The court is aware of that.
23 The state felt an obligation to bring these matters forward
24 at this time because of that.

25 The court also has the police reports regarding this

1 business of I was confused. You have Detective Burbridge's
2 statement, which was signed under the penalty of perjury.
3 It's the lengthy one, where he says Wager told me they told
4 him I was confused. Look at it. For them to suggest that
5 there's nothing to support that I think is missing a
6 substantial part of what's in the court's file.

7 I want to talk about two things. I think there's been an
8 attempt to gloss over them. Number one, this case is a
9 little different regarding this new story or new version of
10 events with Mr. Wager regarding the admission. It's
11 different because unlike all other cases, or all of the cases
12 our office has been involved in, we have a videotaped
13 statement in our possession today of his saying, yeah, I told
14 Mauro and Cilwick that. There's no question that in a normal
15 course, in a normal case, stories change. That happens. In
16 this case the fact that we're aware of it and have it
17 documented is different.

18 I want to go to the bias argument because I just simply
19 fundamentally disagree with counsel on this point. As the
20 court is aware, anything going to bias, when Mr. Wager is on
21 the stand, is fair game. Issues of anything that might have
22 changed his testimony, his dealings and interactions with
23 those attorneys, is fair game if it fairly goes to bias.
24 Does that necessarily mean the arrest is going to come in?
25 No, it doesn't. It doesn't necessarily mean that. But does

1 it mean I was told not to talk to the police or I was told
2 not to talk to anybody after they told me the police were
3 coming, is that going to come in? It probably will.

4 Judge, depending on how that inquiry goes, if Mr. Wager
5 stands up and says I never told the police that, we would be
6 entitled to call Detective Burbridge and Detective Peterson,
7 put them on the stand. What will come in then I don't know.
8 The fact of the arrest may well come in. The point is there
9 is an issue here. It is something we can see today and
10 there's an easy fix today.

11 I want to talk about the standards the court has to
12 consider. The court has the actual conflict standard, or the
13 serious potential conflict standard, or the appearance of
14 impropriety standard set forth in Johnson. It's the state's
15 position that under any of the three there is a basis for the
16 court to disqualify and remove counsel at this time.
17 Particularly as relates to Johnson, where the court made it
18 clear there need not even be proof of that impropriety,
19 simply a reasonable possibility that it occurred.

20 You're there, Judge. Even under Mr. Brown's statements
21 that he took, even with the leading questions, they both
22 acknowledge we were told not to talk to anybody. You're
23 there even under the statements they took. When you take
24 into consideration the police reports, it's far more serious
25 than just a question of 3.4. It's far more serious than

1 that.

2 I want to visit finally about this issue of judicial
3 blackmail. I find that offensive as well. Apparently
4 counsel and I disagree on that.

5 **THE COURT:** Let me interrupt you for a minute on
6 that one. I think that's a bit of a red herring. I'll
7 explain for the benefit of both sides, from time to time that
8 gets raised. I don't considered it blackmail. I think this
9 is the first time I ever the prosecution raise that. It's
10 normally raised by defense counsel. Sometimes the courts
11 welcome an interlocutory appeal. It's not as if there's some
12 intimidation involved in that. I wouldn't think so at all.
13 I'll allow you both to address that to the extent you want
14 to, but I think that's a nonissue.

15 **MR. STEVENSON:** I'll leave it alone, Your Honor. As
16 we've indicated in our briefing, and we stand by this, I
17 think whatever the court does is going to get run up the
18 ladder on one side or the other. It is the state's position
19 that the safest approach today is to make the change simply
20 because we're a month or two in. I accept their
21 representation that they've developed a relationship with the
22 defendant. I accept that. But if you look at Wheat, if you
23 look at what is described particularly in Johnson, when it
24 talks about the court weighing and balancing the court's
25 interest and public concerns regarding proceedings and the

1 way they're held, I think the standard is clearly established
2 and it would be appropriate for the court to make the change
3 at this time. That is the request of the State of Utah.

4 **THE COURT:** Mr. Brown, I'll give you the last word.

5 **MR. BROWN:** I think the court needs to understand
6 exactly what is going on here. I mean, if the court allows
7 the state to remove a qualified team of lawyers and an
8 investigator, mitigation people, et cetera, based upon an
9 arrest, the precedential value of that is significant, the
10 chilling effect to other lawyers that do this work. What
11 these lawyers have done is remarkable. It speaks to their
12 duty and speaks to their obligation to their client. The
13 very easy solution for them, and one that would be personally
14 beneficial to them, would be to get off this case, but they
15 feel a sense of obligation to Wade Maughan.

16 And the state says because they were arrested for having
17 told witnesses not to talk to the police, when we went and
18 talked to those witnesses who said they never told us that,
19 is astonishing and remarkable. We can chronicle the various
20 permutations of that through the pleadings and through the
21 police reports, et cetera. But when you set these people
22 down, put them under oath and ask them questions, they to a
23 person say the lawyers never told us to do that.

24 That's an astonishing fact. One that has to be
25 understood and accepted by the prosecutor here. That's what

1 these people said. It's not what is in a police report, it's
2 what the people said.

3 And you have a police report that is crafted by Detective
4 Burbridge which has been at the heart the controversy from
5 the beginning. And even if it's true, it doesn't create a
6 conflict. And even if there is a conflict, Wade Maughan can
7 waive it. And even if -- and this all against the back drop
8 of the Sixth Amendment right to counsel and the relationship
9 that's been forged between this individual and these lawyers.
10 And the state says just simply sweep that all under because
11 there is this, quote, possibility of something happening down
12 the line. That's offensive. That is not paying respect to
13 the Sixth Amendment.

14 There is nothing that's happened in this case that
15 doesn't happen in every other case, except the lawyer got
16 arrested. That's it. And, Your Honor, if you allow that
17 fact to control whether or not these lawyers can continue to
18 represent Wade Maughan, then you're allowing the State of
19 Utah to orchestrate who his lawyers are going to be. That's
20 the fact of this case.

21 All of those situations that Mr. Stevenson points out,
22 and I never heard him articulate any basis upon which it
23 would be both admissible and create a conflict. The bias is
24 there regardless of who's there. Removing these lawyers
25 doesn't correct that. If it's relevant cross-examination or

1 redirect examination, it is relevant whoever is sitting
2 there. It doesn't matter. By removing them you have not
3 solved any problems. And by removing them you have created a
4 standard that I'm not sure the state wants to create. That
5 is, every decision that is made by the next lawyer will be
6 weighed against the perfect lawyer and the decision the
7 perfect lawyer would make. That's a standard this court
8 doesn't need to reach because you have lawyers on this case
9 that are good lawyers. They will represent this man
10 diligently and ethically and they have done nothing wrong to
11 deserve being removed from this case.

12 Any questions about any conflict that you see that I
13 haven't addressed?

14 **THE COURT:** I don't think so at this time. Thank
15 you. Counsel, I'm going to take some time this morning.
16 I'll get you a decision later this morning. But I want to
17 take at least 20 or 30 minutes to go over things in chambers.
18 I'll have a ruling for you shortly.

19 **MR. BROWN:** I would honestly ask you to look at the
20 Rima statement taken by Mr. Smith.

21 **THE COURT:** I'll see if I can arrange to do that.
22 I'm not sure if I have the equipment.

23 **MR. BROWN:** It's a DVD.

24 **THE COURT:** There's one on CD and that's why it
25 won't play on our DVD player. I'm not sure how that

1 occurred. When it didn't play, I got to studying the disk
2 and it was different from the others.

3 **MR. BROWN:** You know, I wish I was more technical,
4 but I'm not. If you've got a laptop --

5 **THE COURT:** I'll get somebody downstairs to help me.
6 They always do when I get in trouble with the computer.
7 We'll see if we can make it play on one of the computers.
8 All right. Court is in recess.

9 **THE BAILIFF:** Court is in recess.

10 (Recess pending judge's review.)

11 **THE BAILIFF:** The judge will not be coming back in,
12 so court is in recess.

13 (Lunch recess.)

14 **THE COURT:** We're back on the record in the matter
15 of State of Utah versus Wade Garrett Maughan. The defendant
16 is present along with counsel. Counsel and the defendant
17 have been provided a copy of the court's memorandum decision
18 issued this morning.

19 Mr. Maughan, have you had an opportunity over the noon
20 hour to visit with your attorneys?

21 **THE DEFENDANT:** Yes, I have.

22 **THE COURT:** All right. Is it your desire to retain
23 one of them as co-counsel on this case?

24 **THE DEFENDANT:** It's my desire to retain both of
25 them as counsel.

1 **THE COURT:** I understand that. That's clear on the
2 record. You told me that I believe in our last hearing.

3 **THE DEFENDANT:** Yeah.

4 **THE COURT:** You've seen the written decision that I
5 issued, correct?

6 **MR. MAURO:** Judge, we went over that with him and
7 discussed it with him. Although we disagree that there's a
8 conflict, or potential conflict, we have advised Mr. Maughan
9 of the court's ruling.

10 **THE COURT:** Okay. So he understands that I will
11 allow him to make an election in as much as -- I understand
12 his position is he wants both of you?

13 **MR. MAURO:** Yes. And Mr. Williams and I met with
14 him, along with Mr. Cilwick, over the lunch hour. Mr.
15 Maughan indicated to us that to the extent there is a
16 conflict or potential conflict he would waive both of those
17 as to both lawyers. That was the discussion that we had with
18 Mr. Maughan during the lunch hour. He indicated to us that
19 he has an equal relationship with both of us, has an equal
20 degree of trust in both of us. We have worked extensively on
21 his case. We have discussed the facts of the case with him.
22 We have employed ancillary people to assist us in the
23 representation of Mr. Maughan. Mr. Maughan has met with
24 them. We have established a rapport with his family. We
25 have begun significant efforts at completing mitigation in

1 this case. Mr. Maughan is aware of all that. I believe that
2 is why, if there is a conflict or a potential conflict as to
3 both lawyers, Mr. Maughan would be willing to waive that.

4 **THE COURT:** Understood. I think counsel clearly
5 understand, though, that the court has issued its decision.
6 So, Mr. Maughan, at this point, if you don't elect one of
7 them, then I'll appointment new co-counsel as well. But if
8 you want one of these gentlemen to remain on your case, I'll
9 allow to you tell me that.

10 **THE DEFENDANT:** So I have to make a choice?

11 **THE COURT:** Yes. And if you need another five
12 minutes to go back and talk with somebody about it, I'll give
13 you that time.

14 **THE DEFENDANT:** No. If I have to make a choice, I
15 think Mr. Mauro.

16 **THE COURT:** You're asking to keep Mr. Mauro as --

17 **THE DEFENDANT:** Yes.

18 **THE COURT:** You understand that he'll be co-counsel?
19 The new attorney will be the lead attorney on your case?

20 **THE DEFENDANT:** Yes.

21 **THE COURT:** All right. That will be the order of
22 the court, then. Counsel, for purposes of the capital
23 defense fund, do one of you want to prepare an order of some
24 kind so that will fit with their requirements?

25 **MR. STEVENSON:** Sure.

1 **MR. MAURO:** Judge, would you stay an order for about
2 five days? Would you stay an order to about next Wednesday?
3 Then have an order that would be due on that date.

4 **THE COURT:** Any objection from the state?

5 **MR. STEVENSON:** The state has no objection.

6 **THE COURT:** All right. That's fine. We'll stay
7 that until -- that would make it Wednesday, the 22nd of
8 February. And then at that time if an order is submitted the
9 court will enter it.

10 **MR. MAURO:** May I ask a question on a different
11 matter but still relating to Mr. Maughan's case?

12 **THE COURT:** Yes. Do you want this on the record?

13 **MR. MAURO:** No, that's fine.

14 (Sidebar, not reported.)

15 **THE COURT:** Now, Mr. Maughan, you've had the
16 opportunity to visit with counsel about the potential
17 conflicts of interest that could occur; is that correct?
18 They've talked with you about that?

19 **THE DEFENDANT:** Yeah.

20 **THE COURT:** The court is going to allow you to waive
21 any potential conflicts and have Mr. Mauro represent you, as
22 I indicated I would. I want to make sure that you're aware
23 that that is a potential issue. If, for instance, at trial
24 something arose where Mr. Mauro would possibly become a
25 witness, he wouldn't be allowed to testify because he's your

1 attorney. Do you understand that?

2 **THE DEFENDANT:** Yes.

3 **THE COURT:** Do you need any more time to talk with
4 counsel?

5 **THE DEFENDANT:** I don't think so. Not at this time.

6 **THE COURT:** All right. Any other issues we need to
7 address this afternoon, counsel?

8 **MR. STEVENSON:** No, Your Honor.

9 **MR. MAURO:** Nothing.

10 **THE COURT:** Thank you. Court is in recess.

11 **THE BAILIFF:** Court is in recess.

12 (Hearing concluded.)

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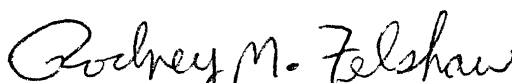
C E R T I F I C A T E

THIS IS TO CERTIFY that the motion hearing was reported and transcribed by me, Rodney M. Felshaw, a Certified Court Reporter in and for the State of Utah.

That a full, true and correct transcription of the hearing, to the best of my ability, is set forth in the pages numbered 2 to 46, inclusive.

I further certify that the original transcript was filed with the Court Clerk, First District Court, Box Elder County, Brigham City, Utah.

Dated this 28th day of February, 2006.


Rodney M. Felshaw, C.S.R., R.P.R.

Addendum M

IN THE FIRST JUDICIAL DISTRICT COURT
BOX ELDER COUNTY, STATE OF UTAH

STATE OF UTAH,

Plaintiff,

vs

WADE GARRETT MAUGHAN,

Defendant.

MEMORANDUM DECISION

Case No. 051100355

HON. BEN H. HADFIELD

This case is before the Court pursuant to the State's Motion to Disqualify Counsel. After extensive briefing and argument, the Court issues the following decision:

1. The arrest of defense counsel in another jurisdiction on charges of witness tampering related to a witness in this case appears to be an unprecedented occurrence.
2. The arrest and potential prosecution of defense counsel has created a firestorm of controversy totally independent of the pending capital homicide charges.
3. There is the continuing possibility of prosecution of defense counsel in the state of Washington or of other proceedings under Rule 3.4 of the Rules of Professional Conduct.
4. This case is in the earliest stages; a preliminary hearing has not even been scheduled.
5. There is a potential conflict that examination of Mr Wagar at trial might raise issues which implicate either Mr Mauro or Mr Williams to the Defendant's detriment.

This Court must balance "Defendant's right to be represented by an attorney of his choice against the need to maintain the highest standards of professional responsibility,

the public concern in the integrity of the judicial process and the orderly administration of justice.”

State v Johnson, 823 P2nd, 488 (Utah Ct. App. 1991)

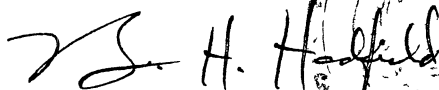
This Court is persuaded that there is “at least a reasonable possibility that either a serious violation of law or ethical standards occurred. The Court therefore directs that a new lead counsel be appointed from among those qualified for this type of case. The normal procedure utilized by the Administrative Office of the Courts shall be followed.

In an attempt to balance the Defendant’s 6th Amendment rights, the Court will allow the Defendant to confer with counsel during the noon hour and then select one of the current counsel to remain as co-counsel on this case. That election will be made in open court after Mr Maughan is advised of the potential conflicts of interest.

This Court is not making a finding that defense counsel have committed wrongdoing. On the contrary, this Court’s prior dealings with both defense counsel have all been positive. The Court finds today only that there is a reasonable possibility that witness tampering occurred.

Dated this 15th day of February, 2006.

BY THE COURT



Judge Ben H Hadfield
District Judge

